TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~419~~ 138 ~~[illegible]~~ 7

PEYTON GRYMES, APPELLANT,

vs.

GEORGE S. REPPLIER AND JAMES LANIGAN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED MARCH 31, 1873.

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1 In the circuit court of the United States for the eastern district of Virginia, and fourth judicial circuit, held at the court-room thereof, in the city of Richmond, in said district, on Saturday, the 6th day of April, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the 96th year. Present, Hon. Hugh L. Bond, judge presiding, Hon. John C. Underwood, dist. judge, associate.

Style of suit.

GEORGE S. REPPLIER AND JAMES LANIGAN, citizens of the State of Pennsylvania, complainants,
against
PEYTON GRYMES, A CITIZEN OF THE STATE of Virginia, respondent.
} No. 43. In equity.

Be it remembered that heretofore, to wit, on the 21st day of March, 1868, came the complainants, by their attorney, and filed in the clerk's office of the court aforesaid their bill of complaint against the respondent, which bill is in the words and figures following, to wit:

2 *Bill of complaint.*

BILL.

To the judges of the circuit court of the United States for the district of Virginia:

George S. Repplier, a citizen of the State of Pennsylvania, resident in the city of Philadelphia, and James Lanigan, a citizen of Pennsylvania, resident in Pottsville, bring this their bill against Peyton Grymes, a citizen of the State of Virginia, resident in the county of Orange, and thereupon your orators complain & say, that in the latter part of February, or early in March, 1866, proposals were made to them by the said Peyton Grymes through his agent, R. H. Catlett, esq'r, of the town of Staunton, in the State of Virginia, to sell and convey to them a tract of about 400 acres of land lying in the county of Orange, about twenty miles from the court-house of that county, and represented to them as abounding in rich and productive gold-ore. That your orators being desirous of obtaining lands of that description in Virginia, & with the sole view of engaging in the gold-mining business, agreed to negotiate with said Grymes for the purchase of his said gold property, and, with a view to that object, not being able to visit the property themselves in person, they engaged a trusty and intelligent agent,
3 Howell Fisher, to go with said Grymes or such agents as he might appoint to visit said land, to be shown its situation and boundaries, and to report to your orators upon its location, its probable gold productiveness, and its probable value for gold-mining purposes.

Accordingly, about the time above mentioned, the said Fisher, on the invitation of said Catlett, acting as the agent of said Grymes to make sale of said land, went with Mr. Catlett to Orange C. H., in the immediate vicinity of which said Grymes lives. There the said Catlett and Fisher were met by a son of said Grymes, with a carriage and pair of mules to take them at once to visit the property, & under the escort of his said son they proceeded at once to the property, and arrived there

that evening. Early the next morning the said Catlett & Fisher, in company with other persons found upon the place, made a brief inspection of the land & some of its boundaries, as shown to said Fisher by the agents of said Grymes.

4 Several points were shown him where gold-veins were said to exist, but were entirely undeveloped. Only one point was shown at which there was a shaft sunk, which was represented to be within the boundaries of the land proposed to be sold, & as being very valuable, abounding in rich quartz, and yielding large returns of pure gold. This was the only shaft alleged to be within the boundaries of the property offered to y'r orators for sale. Mr. Fisher, the agent of your orators, was a total stranger in the neighborhood, and knew nothing personally of the boundaries of said land, but the representation that said shaft and the gold-vein upon which it was located was within the boundary to be sold to your orators was made to him not only by Mr. Catlett, the agent of said Grymes, but by a Mr. Hume, the grandson of said Grymes, who was there washing gold, and who had been called upon by the son of said Grymes and said Catlett to show the land and its boundaries to said Fisher. The fact was controverted by no one, and fully believed by said Fisher. On the return of the party to Orange C. H., the fact

5 of said shaft and vein being on the land, and of their remarkable richness, was much spoken of & insisted upon by said Grymes's son and by Mr. Catlett, & in a sojourn of a day and night by said Fisher & Catlett at the house of said Grymes, the same fact of said shaft and vein being on the land for sale, and of their value, was freely spoken of, said Grymes being at home, and, as your orators charge, hearing these conversations without contradicting them.

The said Fisher at once made a report to your orators, who were entirely ignorant of said land or its boundaries, of his visit to the property, representing to them that said vein and shaft constituted part and parcel of the property to be sold, and the great value of the same as represented to him as aforesaid, and thereupon, influenced by those representations and verily believing that said vein and shaft constituted part of their purchase, your orators agreed and contracted to give the said Grymes $25,000 for said tract of about 400 acres, and paid down

6 to the said Grymes, through his agent and attorney, said R. H. Catlett, on the 7th of April 1866, $12,500, being the first installment of the purchase-money of said 400 acres of land, called the Vancluse gold-mine property; the said Grymes at the same time executing to your orators a deed with general warranty to said property, and depositing the same as an escrow, with Thomas A. Robinson, esq., at Orange C. H., Virginia, to be delivered to the purchasers upon the payment of the last installment of the purchase-money; all of which appears from the receipt of said Grymes by his said attorney Catlett here exhibited, marked A, and prayed to be taken in connection with the power of attorney of said Grymes to said Catlett attached to said receipt as part of this bill.

Your orators aver that it was not until after the lapse of a considerable time after the execution & deposit of said escrow, and after the payment of said first installment of purchase-money, that they had any

7 reason to doubt that the said shaft and gold-vein were part and parcel of the land so contracted to be purchased from said Grymes. They constituted the chief consideration with them for the making of the contract and the payment of the money aforesaid.

They farther aver that some time after said contract had been made, and after the money had been paid as evidenced by said receipt, they

were for the first time informed that neither the said shaft nor vein was included within the boundaries of the land so sold and conveyed to them; that they did not belong to said Grymes at the date of the contract aforesaid, but had been previously sold off and conveyed by him to other and prior purchasers.

On communicating this information to said Grymes, he fully admitted that it was correct, and thereupon your orators insisted upon a dissolution of said contract, unless the said Grymes could make them a good title to said vein and shaft, on the ground that the existence of
8 the said vein and shaft within the boundaries bargained by said Grymes to them had been represented to their agent by said Grymes and his agents, had been fully believed by your orators in faith of the correctness of said representations, was a most material fact, and essential to the character of said contract, and one which if your orators had not believed at the time would have prevented them from making said contract of purchase at all; but the said Grymes, still admitting his inability to make your orators a good title for the gold-vein and shaft aforesaid, unjustly refuses to rescind the contract or to give to your orators any just compensation or relief from the serious losses which they would incur through the misrepresentations of said Grymes and his agents, and the material mistake into which your orators were led by those misrepresentations.

Having failed in all these efforts to obtain redress by the voluntary act of said Grymes, your orators, in December last, by way of
9 making preparation for a suit which they found would be inevitable, caused a survey to be made of the said Vancluse property, and a map thereof to be prepared by an experienced engineer & surveyor, which map is here exhibited and prayed to be taken as a part of this bill, marked B. From that map the court will see the lands included in the deed from said Grymes to your orators, deposited as an escrow with said Robinson, laid down in two parcels, bounded by black lines and shaded of a red colour. The yellow line about midway between the two said parcels designated as the Vancluse and Melville gold-vein, with the shaft marked thereon as the red-oak shaft, is the gold-vein and shaft shown by the agents of said Grymes to said Fisher, acting as the agent of your orators, as included in the boundaries of the land proposed to be sold by said Grymes to your orators, but which in fact at the time did not belong to said Grymes. The other yellow straight lines
10 laid down as running through the larger division of the land included in said deed called the Woodville gold-vein, the Greenwood gold-vein, & supposed gold-vein, have none of them been developed, and may or may not turn out to be valuable, so that the chief, if not the only inducement of your orators in making the said contract of purchase with said Grymes was the belief on their part induced by assurances from himself and his agents, that the said Vancluse and Melville gold-vein, with the shaft thereupon, constituted part, and parcel of the lands your orators were purchasing, and that having been worked they were ascertained to be very productive. Your orators therefore aver that said contract between them and said Grymes was induced by and based upon serious and material mistake in reference to the subject which they were contracting to purchase, founded upon misrepresentation made in reference thereto by said Grymes, and his agents, on which your orators were
11 authorized to rely, and did rely, as true, and that the result has been that under said contract they have not obtained and cannot be invested with a most material portion of the property they sup-

posed they were purchasing. They are advised that it makes no difference to their rights whether the said misrepresentations were made knowingly on the part of said Grymes and his agents or not; that the fact of their being made and acted upon by your orators is sufficient to prove that the said contract, as it exists, was never consented to by your orators, and they have not thereby obtained the property which they supposed they were purchasing, and that the execution of said contract would operate a grevious fraud upon the rights of your orators.

Your orators believe, and so charge, that the other pretended gold-veins within the boundary of said land which the said Grymes is authorized to convey are of no value adequate to justify the working of them.

12 This belief is founded upon some explorations made by them since the date of the said contract; but however this may be, your orators are advised that, having failed to get all that they were entitled under the representations of said Grymes, and having lost a most material part of that which they were induced to believe they were purchasing, they are still entitled to a recision of said contract, inasmuch as it would be impossible to estimate the value of that which was lost, or to afford just compensation.

In tender consideration whereof, and forasmuch as your orators are remediless in the premises by the strict rules of common law, and cannot have adequate relief except in a court of equity, where matters of this kind are properly cognizable and relievable, your orators pray that the said Peyton Grymes and R. H. Catlett may be made parties defendant to this bill. May it please this honorable court to grant a writ of subpœna, directed to the marshal of the district of Virginia, and

13 commanding the said Peyton Grymes and Catlett to appear and make answer unto this bill of complaint, and to perform and abide by such orders and decrees herein as to the court may seem required by the principles of equity and good conscience. Let the said Grymes and Catlett answer and say whether the facts set forth by your orators in this bill are not all true; and if not, which of them are untrue and in what respect.

Secondly. Let them say whether it was not by his own procurement and authority that the said R. H. Catlett, and one of his own sons, accompanied the said Howell Fisher, known by him to be the agent of your orators, for the purpose of showing the said land to said Fisher with a view to the sale of it to your orators.

Thirdly. Whether he did not know that the said Fisher and your orators were ignorant of the locality and boundaries of said land, and that the object of said Fisher in going there on that occasion was as

14 the agent of your orators to make himself acquainted with said land, its value for gold-mining purposes, for which your orators desired to purchase, and that his object was to impart to your orators the knowledge he obtained on that trip.

Fourth. Let him say whether the said Fisher and said Catlett, on their return from their visit to said land in February, 1866, did not sojourn together at his house for a day and night; whether, during that time, the said "Vancluse" and "Melville" vein and shaft, and their richness, and their constituting a part of the land to be sold, was not the subject of conversation in his presence; whether he does not know the fact that your orators supposed they were purchasing the same from him.

Fifth. Let him say whether the said Catlett and his said son, and the said Hanes, were not his constituted agents to show the said land, its

boundaries and its gold-producing qualities, to the said Fisher as the known agent of your orators.

15 Sixth. Let him say whether he does not know that the said gold-vein and shaft were not included within his boundaries, and that it is not now in his power to convey them to your orators.

Seventh. Let him produce before this court the said escrow deposited with said Robinson at Orange C. H., or an attached copy of it, and say whether your orators have not paid him, in pursuance of said contract, the sum of $12,500 at the date of the receipt aforesaid.

Finally, let him answer the said bill in all its allegations as fully and particularly as if the same were propounded to him by way of interrogatory.

And your orators pray that, in tender consideration of the premises, the contract aforesaid, between them and the said Grymes, may be set aside, cancelled, and annulled; that your orators may have a decree against the said Grymes for the said sum of $12,500, with interest from the date when they paid it to said Grymes, and for a lien upon

16 the land aforesaid to secure the payment thereof; and that your honours will grant unto your orators such other and further relief in the premises as may be suited to the nature of their case and to the rules of equity; and your orators, as in duty bound, will ever pray, &c.

MICHIE & MICHIE,
Of Staunton, Va.

Exhibit A with bill.

EXHIBIT A.

Know all men by these presents that R. H. Catlett, of Augusta Co., Va., is hereby constituted and appointed my attorney in fact, for me, and in my name to affix to the deed of sale of the Vancluse property in Orange Co., Virginia, the revenue stamp required by the laws of the United States, and to obliterate the same; and further to collect from Messrs. Lanigan and Repplier the purchase-money for the said property, and for me and in my name to receipt for the same, and to do any and all other things necessary to complete and perfect the sale: and I

17 hereby confirm and ratify the acts of my said attorney in the premises as fully and effectually as if I was present and acting for myself.

Witness my hand and seal this 27th day of March, 1866.

PEYTON GRYMES.

Received April 7th, 1866, of George S. Repplier and James Lanigan, twelve thousand five hundred dollars, it being the first instalment of the purchase-money for the Vancluse gold-mine property in the county of Orange, State of Virginia, containing four hundred & $\frac{70}{100}$ acres, and bounded as follows, as per accompanying map of survey:

A B, S. 84$^{p}\frac{1}{2}$, E. 244 poles.
B C, S. 25$\frac{3}{4}$, W. 177 "
C D, course of run, "
D E, N. 53$^{d}\frac{1}{2}$, W. 211 "
E F, N. 57$^{d}\frac{1}{2}$, W. 48 "
F G, N. 6$^{d}\frac{1}{2}$, W. 59 "
G H, N. 53, E. 26 "
H I, N. 16$\frac{1}{4}$, W. 56 "
J A, N. 20$\frac{3}{4}$, E. 78 "

18 J K, N. 84½, W. 189 poles.
K L, S. 21, W. 18 "
L M, S. 8, E. 39 "
M N, S. 10½, W. 38 "
N O, N. 74, E. 68½ "
O P, S. 80, E. 33½ "
P Q, S. 37, E. 37½ "
Q R, S. 75 E. 15 "

The deed to the above-described property has been duly executed with general warranty, and deposited as an escrow with Thomas A. Robinson, esq'r, at Orange C. H., V'a, to be delivered to the purchasers upon the payment of the last instalmemt of the purchase-money.

R. H. CATLETT,
Att'y, &c., for Peyton Grimes, as per power of attorney annexed.

Witness:
EDWARD KENNY.

The following map is the one referred to in the foregoing bill as Exhibit B.

(Here follows map, marked pages 19 & 20.)

21 Whereupon a subpœna in chancery was issued returnable at April rules, 1868.

Subpœna in chancery.

Chancery subpœna.

UNITED STATES OF AMERICA,
District of Virginia, ss:

The President of the United States of America to Peyton Grymes, a citizen of the State of Virginia, greeting:

We command you, and every one of you, that you appear before our judges of our circuit court of the United States of America for the district of Virginia, at the court-room, in the city-hall, in the city of Richmond, in said district, on the first Monday in the month of April next, to answer the bill of complaint of George S. Repplier, a citizen of the State of Pennsylvania, and James Lanigan, a citizen of the State of Pennsylvania, this day filed in the clerk's office of said court in said city of Richmond, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the district of Virginia to execute.

22 Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Richmond aforesaid, this 21st day of March, in the year of our Lord one thousand eight hundred and sixty-eight, and of our Independence the 92d.

W. H. BARRY, *Clerk.*

MEMORANDUM.—The above-named defendant is notified that unless he enters his appearance in the clerk's office of said court, at Richmond aforesaid, on or before the day to which the above writ is returnable,

the complaint will be taken against him as confessed, and a decree entered accordingly.

W. H. BARRY, *Clerk.*

Deputization.

U. S. MARSHAL'S OFFICE,
Richmond, March 21st, 1868.

I hereby depute the sheriff of Orange C'y, or his deputy, to execute this writ and make return in due form.

W. A. DUNCAN,
U. S. Marshal ad Interim.

23 *Marshal's return.*

Return.

Executed on the 24th day of March, 1868, by delivering to Dr. Peyton Grymes a true copy of the within summons.

JOSEPH H. HOUSEWORTH, *D'p'y,*
For JAMES ROACH, *Sheriff O. C.*

ORANGE COUNTY, *March 24th,* 1868.

Continued at rules.

And at another day, to wit, at rules, held in the clerk's office of said circuit court, on the first Monday in April, 1868, on motion of the plaintiff, this cause is continued until the next rules.

Decree nisi at rules.

And at another day, to wit, at rules, held as aforesaid, on the last Monday of April, 1868, the subpœna in chancery issued in this cause having been returned, executed upon the defendant, and he failing to appear, it is ordered that unless he shall appear according to law, the bill in this cause will be taken for confessed, and the court will decree accordingly.

24 And at another day, to wit, at rules, held as aforesaid, on the first Monday of June, 1868, the defendant still failing to appear, on motion of the complainants, by their attorney, their bill is taken for confessed, and this cause set for hearing.

And at another day, to wit, at a circuit court of the United States for the district of Virginia, held in the court-room thereof, in the city of Richmond, in said district, on the 5th day of December, 1868, came the respondent, Peyton Grymes, by his attorney, and filed his answer to the complainants' bill, which answer is in the words and figures following, to wit:

Answer.

The answer of Peyton Grymes, a resident of the county of Orange, in the State of Virginia, and a citizen of said State, to a bill of complaint filed against him in the circuit court of the United States, in the district of Virginia, by George S. Repplier and James Lani-

25 gan, who are stated in the bill to be citizens of the State of Pen'sylvania.

This respondent, saving to himself the benefit of all just exceptions to said bill, for answer thereto, or to so much thereof as he is advised it is material he should answer unto, says:

That in the year 1865 or 1866 Richard H. Catlett applied to him for the agency for the sale of the land in the bill referred to, to which application respondent replied that whenever said Catlett would bring him $20,000 he would give him a deed for the land, and allow him a commission on the amount.

This (which was repeated on different occasions) was the only authority ever given by your respondent to said Catlett to sell said land, and was considered by said respondent, not as an appointment of said Catlett as his agent to sell, but rather as a promise made him that if, at any time before respondent disposed otherwise of the land, said Catlett could make such arrangements as to enable him to pay down the

26 sum of $20,000, less a commission thereon, respondent would allow him to become the purchaser at that price.

In February or March, 1866, respondent heard that said Catlett was about to take a person, named Fisher, to look at the land, and had arranged with a son of your respondent, who had married a sister of Catlett, to meet them with a vehicle, at the depot at Orange Court-House, and carry them to the place. Your respondent, if he had been applied to, would no doubt have afforded them every facility in his power, but he had, in fact, nothing whatever to do with making or executing the arrangement for the visit to the property. His son, who accompanied them, was, it is true, living with him on his farm, near Orange court-house, and managing it for him, but it was not as his manager or agent, or at his instance, but at the request of Catlett, that your respondent's son met Catlett & Fisher at the depot, and carried them to the land in his, your respondent's, son's own carriage, drawn by his own mules.

Your respondent did not authorize his said son, or any one else,

27 to act for him in showing the situation and boundaries of the land, nor did he even designate any person as being able to point them out. Indeed, he heard no suggestion that any one desired him to do so.

The parties (Catlett, Fisher, and the son of your respondent) set off for the land immediately after the arrival of the train at Orange Court-House, but (as they informed your respondent on their return) they did not reach it until after sundown, and left it the next morning soon after sunrise, Fisher saying he must get back to Orange Court-House (a distance of 24 or 25 miles, over a rough road) in time for the train, which passed at midday. They arrived there a little too late for the train, and Fisher, being thus detained, came with Catlett to the house of your respondent, (within a mile of the court-house,) where they remained until it was time to leave to take the train that passed about 11 o'clock that night, upon which Fisher went off.

While Fisher and Catlett were thus at the house of your re-

28 spondent, a good deal of conversation was had about the value of your respondent's land as gold property. Your respondent spoke of it as containing, to the best of his belief, an abundant supply of gold, saying that, including what he had done on the portions sold to Smith and the Liberty Mining Company, he had operated for gold on the land for some twenty-two years, and had realized very handsome profits, as could be ascertained by enquiry at the Bank of Virginia in Fredericksburg, where he had made deposits, and at the Mint in Philadelphia,

where he had sold gold, and that specimens might be seen at the Patent-Office in Washington. Your respondent further stated that he believed that the land then retained by him was as rich in gold as either of the parcels of 200 acres each that he had sold off from the original tract, and that he was satisfied in his own mind that there was more than one good vein upon it, although no vein upon that portion had ever been developed, he having operated upon it for surface-gold exclusively.

This is the substance of all that was said by your respondent
29 on that occasion about the property. Not one word was said to him, or in his hearing, about its being supposed by any one that there was, or ever had been, a shaft upon any portion of the land then owned by him, and he did not for an instant imagine that any one thought so. If he had been informed that there was any such impression, he would at once have stated, in distinct terms, that there was no such shaft upon the land. As it was, what he did say, namely, that he believed it contained good veins, though none of them had been developed, and that he had operated it for surface-gold only, was wholly inconsistent with the idea that it had a shaft upon it; and if Fisher really so believed when he came to the house of your respondent, he could not have so continued to believe after hearing what your respondent told him.

Some time after this visit had been made by Fisher, your respondent heard that Catlett was negotiating with parties in Philadelphia, whom Fisher represented, for the sale of the property, and your re-
30 spondent (as well as he now recollects) wrote to him to the effect that, if he intended to do anything, he had better act promptly, inasmuch as, in the event of delay, your respondent might dispose of the property to some one else.

Soon after this, and before the sale was consummated, Fisher visited Orange Court-House, with the view of looking into your respondent's title to the property. He did so with the aid of counsel, having before him the will of your respondent's mother, admitted to probate in the year 1832, under which your respondent became entitled to the original tract; and the deeds of your respondent conveying 200 acres of it to W'm K. Smith, in the year 1843, and 200 acres more of it to the Liberty Mining Company, in the year 1852, and also a plat of the portion then owned by your respondent, which plat he had previously seen and examined on the occasion of his visit to the land.

He thus had the most ample opportunity to obtain information as to the exact boundaries of the portions of land which had been sold, as well as of those which had been retained by your respondent,
31 and, if any misrepresentation had been made, to detect it. The deeds and plat showed that in the first sale to Smith, a portion of the vein known as the Vancluse & Melville gold-vein was parted with, and that the residue of that vein, (upon which is the shaft which the plaintiffs pretend that Fisher and they believed to be on the land bought by them,) was afterwards sold to the Liberty Mining Company, dividing the land retained by your respondent into two parcels, separated from each other by the land through which the vein passed. The only question, however, that was raised by Fisher, was as to the quantity of land then owned by your respondent—the deeds and plat calling for more than the number of acres named in the will. This discrepancy was explained to his satisfaction, and not long afterwards Catlett applied to your respondent to execute a deed for the land, stating that a sale had been effected by him. At his instance, your respondent made the deed directly to the plaintiffs, though he regarded Catlett as being really his vendee, and the plaintiffs as purchasers from Catlett,

32 supposing as he did that it could make no difference, so far as his interests were concerned, whether he conveyed the land to Catlett himself, or to those to whom Catlett requested that it should be conveyed. He therefore made no difficulty about adopting the form proposed by Catlett, by which authority was given to Catlett to receive the money from the plaintiffs, and the deed was made by your respondent to them. According to the best of his recollection, it was not until he executed the deed that your respondent knew at what price the land had been sold by Catlett. Catlett paid him $10,000, telling him that within six months, at farthest, he would pay him the other $10,000, so as to make up the $20,000 he was to get for the property. On receiving the $10,000 from Catlett, your respondent offered to let him deduct his commission from the amount, but he declined to take it, saying he was amply paid. This $10,000 is all that your respondent has received on account of the purchase-money for the land, and he expects to receive only $10,000 more, Catlett being entiled to the $2,500 due from the plaintiffs.

33 Your respondent files herewith a copy of the deed executed by him to the plaintiffs, and deposited as an escrow with Thomas A. Robinson, of Orange Court-House, and he files also a copy of the bond of the plaintiffs for the unpaid purchase-money, amounting to $12,500, which is likewise deposited with the same gentleman. The said copies are certified to be correct by Richard Chapman, the justice of the peace who took your respondent's acknowledgement to the deed, and are marked respectively A & B.

The plaintiffs immediately after the execution of the deed took possession of the land, and have been ever since in the undisturbed use and enjoyment thereof.

Your respondent, of course, cannot say of his own knowledge what representations were or were not made to Fisher while he was on the land, afterwards bought by the plaintiffs, or elsewhere, out of the hearing of your respondent.

But he does not admit or believe that any such representations as alleged in the bill, as to the location upon your respondent's land of the shaft and vein in which it is sunk, were ever made to him, at any

34 place or by any person, and your respondent calls for full proof of everything alleged to have been said or done by which his interests can be in any wise injuriously affected.

Your respondent does know that there was no person on the land when Fisher was there, who was authorized by your respondent to point out its boundaries, or to make any representation respecting it, unless indeed it shall be held that the legal effect of the position in which Catlett stood towards your respondent was such as to invest him with such authority. If this was the case, which your respondent does not admit, he can only say that it was not his intention to confer any such authority upon him, and he did not suppose that he had done so. The question as to his authority, however, is not, as your respondent is advised, a very material one, because he has been informed by said Catlett, and believes it to be true, that said Catlett did not make any representations whatever to said Fisher respecting the location of the shaft or vein in question, not having, or professing to have, the slightest knowledge of the boundaries of the land.

35 As to the allegation of the bill that a Mr. Hume, a grandson of your respondent, who was on the land washing gold, was called upon by the son of your respondent, and said Catlett, to show the land and its boundaries to said Fisher, and that he represented to him that

the shaft and vein referred to were on said land, your respondent says, that it is true that P. G. Hume, his step-grandson, was on the land at the time referred to, having been some time before permitted by him to go there and wash for gold for his own benefit, but without any agency for, or compensation to, your respondent. He was a young man, without employment after the war, and therefore your respondent gave him this privilege. He was an unfit person to be selected by any one to point out the boundaries of the land, never having himself been particularly informed respecting them, and your respondent does not believe or admit that he was called upon either by his son or said Catlett to show them to Fisher, or that he undertook or professed to be able to do so. On the contrary, your respondent has been informed, and believes it to be true, that his son told Fisher they did not know the boundaries,
36 and proposed to send for a man named Ryland Johnson, who lived in the immediate vicinity and was well acquainted with them, to point them out to him, but that Fisher would not let him be sent for, saying that he did have time to wait, as he must get back to Orange Court-House to take the train that day, and, moreover, that he did not care to see the boundaries.

Your respondent is further informed, and believes it to be true, that his son, so far from representing to Fisher that the shaft was on the land, told him distinctly, while they were on the premises, that your respondent had never operated on the land then owned by him, except for surface gold.

Your respondent respectfully insists that even if it can be proved that anything was said or done either by said Hume, or by any other party whom Fisher saw on the premises, which was really calculated to produce the impression that the shaft was on the land of your respondent, that his rights and interests ought not to be to any extent affected
37 thereby, it being Fisher's own folly to rely upon any impression or belief thus created, to say nothing of the correction afforded by the declaration of your respondent and his son that the land had been worked for surface gold exclusively.

Your respondent never heard any intimation that the purchasers or any one else supposed that the shaft was on the land bought by them until a considerable time after the sale, when an agent of the plaintiffs, named Bowman, told him they had bought the property believing it to have a shaft on it; that it had been so represented to Fisher, and that the plat furnished by your respondent, and by which the land was sold, which was then in the possession of the plaintiffs, had a shaft marked on it as being within the boundaries of the land bought by them.

Your respondent at once replied that neither he nor any one by his authority or with his knowledge had ever represented that there was any shaft upon the land; that no shaft was marked on the plat as
38 being within its boundaries, when he gave it to Fisher, and that if any such shaft was then marked on it, it had been placed there after it had passed from his hands, and without any authority from him.

Although the said Bowman did not yield the point that the plaintiffs had supposed when they bought the land that there was a shaft upon it, he did not propose to rescind the contract, nor did he even intimate that the plaintiffs had any desire to have it rescinded.

On the contrary, he afterwards proceeded to the land to make explorations for gold and develop the property, and did make explorations thereon, having, while at Orange Court-House and before going down to

the land, exhibited a finely prepared map of it, corresponding in its general outline with the plat which had been given to Fisher by your respondent, but having delineated upon it several veins of gold, none of which were laid down upon said plat, and which were represented as running in a direction entirely different from that of the gold-veins in that part of the country.

39 He had with him also a long written description, or rather pretended description, of the property, puffing it most extravagantly, which, together with the map, the plaintiffs had caused to be prepared with the view of selling off shares in it as a joint-stock concern.

Your respondent has been informed that both of the plaintiffs soon after they made their purchase, visited the land, and while they were upon it some question being raised as to whether or not the shaft referred to was upon the land bought by them, were distinctly informed by Mr. Ryland Johnson (the same person whom the son of your respondent wished to get to point out the boundaries to Fisher as has hereinbefore stated) that it was not, but was on the land which had been sold by your respondent several years before to the Liberty Mining Company.

After receiving this information, and before leaving the premises, they employed an agent to make explorations for them on the land, giving him instructions to proceed to have cross-cuts made at different

40 points on the premises with the view of discovering a gold-bearing vein. These explorations were to some extent made, when more than a month afterwards they sent on the said Bowman as their agent to make more extensive explorations for them, having, in the mean time, never given your respondent any notice, or even hint, that they were disappointed in finding that the shaft was not on their land or that they were for any other reason dissatisfied with their purchase. And this, although one of them, (Lanigan,) on his way home from his visit to the land, when he was informed that the shaft was not upon it, stopped at Orange Court-House, and had full opportunity to make known to your respondent the ground of his complaint, if in truth he had any.

As your respondent has stated, the first he ever heard of it was from Bowman more than a month afterwards, and it was not until after Bowman had completed his explorations (which turned out unsuccessfully) that he was apprized that the plaintiffs desired to rescind the contract, and would rely upon alleged misrepresentations as to the location

41 of the shaft as giving them the right to have it rescinded.

Your respondent further states that the shaft in question was one sunk by himself many years ago, upon the land afterwards sold to the Liberty Mining Company; that it was operated by him up to the time of that sale, and by that company for some time afterwards, but was entirely abandoned by them a considerable time before they stopped operations. He does not admit or believe that it entered materially into the estimate of the value of the property, even if Fisher supposed that it was on the land, much less that it, or the vein into which it was sunk, constituted the chief consideration for making the contract. On the contrary, your respondent has been informed, believes, and charges it to be true, that said Fisher seemed to be chiefly impressed by what he heard from the tenant on the land, at whose house he and Gatlett and the son of your respondent spent the night, as to the pieces of gold he had frequently found after a rain, in the hill-side below the house,

42 (a long way off from the shaft, and in a different direction from that of the Vancluse & Melville vein,) and where, as your re-

spondent believed, and still believes, there is to be found, upon proper explorations, a richer vein than any which has yet been discovered on any part of the original tract. These representations, and those made by your respondent as to the quantity of gold obtained by surface-washings, were, as your respondent believes and charges, what Fisher relied on in making his estimate of the value of the property, and constituted the inducement to its purchase by the plaintiffs. The allegation that they were induced to purchase by the belief that the shaft and vein in question were "part and parcel of the land," is a mere pretense and afterthought, resorted to by the plaintiffs for the purpose of getting rid of a contract which did not turn out to be as profitable a speculation as they anticipated. For, from the course pursued by them, your respondent feels warranted in denying the truth of the allegation in the
43 bill, that they bought the land "with the sole view of engaging in the gold-mining business," and in charging that they bought it on speculation merely, and with a view of making a profit by selling shares in the property, or otherwise disposing of it to others as soon as it could be developed, or puffed sufficiently to enable them to do so. Had the disposition to invest in gold lands in Virginia continued as strong in the summer and fall of 1866 as it was when they purchased in the spring of that year, and had their explorations on the land proved successful, no demand would have been made by them for a rescission of the contract. Even if it could be made to appear (as your respondent thinks it never can be) that the shaft and vein in question were a material consideration with the plaintiffs in making the purchase, and that their belief that they were upon the land was so created as to give them the right to have the contract rescinded, your respondent is advised and insists that such right has been lost and forfeited by
44 the course which the plaintiffs have pursued.

If they intended to avail themselves of the right to rescind, it was their duty to give your respondent notice of that intention as soon as they discovered the mistake. They had no right to continue to treat the property as their own, and to make explorations upon it. Yet, as has been stated, without notice to your respondent of any wish on their part to rescind the contract, they did proceed to make explorations, and continued them until they came to the conclusion that they had made a bad bargain, and then, for the first time, they announced their purpose to get rid of it.

If they can now succeed in this, your respondent will be put in a very different situation from that in which he would have been placed by an immediate rescission of the contract.

Other persons were negotiating for the purchase of the property about the time that the plaintiffs were, and if the plaintiffs had
5 not bought it, or if the contract had been rescinded as soon as they discovered that the shaft was not on the land, your respondent believes that he would have been able to effect a sale of the property as it stood, upon terms at least as favorable to himself as those upon which it was sold. But the unsuccessful explorations made by the plaintiffs destroyed its market value as gold-property, and render it impossible to dispose of it as such, at least until new explorations shall have been made, and with decided success.

Your respondent still believes that such will be the result of explorations properly made; for those made under the directions of the plaintiffs were, as he has been informed, unskilfully and imperfectly conducted, and were abandoned when their agent was assured by those familiar with the gold-veins in that neighbourhood that he had the most flatter-

ing prospects for success. But even if your respondent had (as he has not) the means for the purpose, he is too old (being in his 78th year) to make suitable explorations, or to operate for gold, so that, if he
46 is now compelled to take back the land, its value as gold property will be entirely lost to him.

Supposing, however, that the explorations made by the plaintiffs were properly and skilfully conducted, and that they show that there is no good reason to believe that the land contains any gold-vein worth working, the result of said explorations will, if your respondent is compelled to take back the property, be even more prejudicial to him than in the case first supposed, and the injury is one that the plaintiffs have no right whatever to subject him to.

The land, as it stood, had a market value for the gold it was supposed to contain. Explorations would increase or lessen this value; it was uncertain which, for their result is always more or less doubtful. The plaintiffs had no right, without the consent of your respondent, to subject him to the risk of making explorations, even if he had been in a position in which he could have been benefited by the result. Much less can they have any right to subject him to loss from an experiment
47 by which they alone could possibly be benefited, as they will do if they are now allowed to rescind the contract. If their explorations had proved successful, they only would have been profited; as they turned out otherwise, it is but fair that they should bear the loss caused by them.

Your respondent further shows that it would be unjust now to rescind the contract, and require him to take back the land, not only for the reasons already given, but, also, because the land itself has been most materially damaged since it was taken possession of by the plaintiffs, by the making of roads over it, the cutting down of trees, including those near the house, which were valuable for shade and ornament, and by injury to the garden and dwelling-house, and by other acts of waste and destruction done or permitted by the plaintiffs, by which the value of the property has been materially lessened.

Your respondent begs leave to call the attention of the court to the fact that the original plat, delivered by him to Fisher, and ac-
48 cording to which the deed was made, has not been filed with the bill, although the plaintiffs have it in their possession. This is the more remarkable in view of the fact that, when they first claimed that the contract should be rescinded, they relied on this plat as conclusive evidence to show that the shaft had been falsely represented to be on the land sold them, alleging that it was laid down on the plat, and that it was there when your respondent delivered it to Fisher.

Your respondent at once and most emphatically denied the truth of this allegation, and he now again avers that, when he parted with this plat, there was no shaft marked on it, and no veins of gold were delineated on it, the only mention of gold which it contained being, according to the best of his recollection, the words "branch containing gold," which were written along a branch laid down it; yet, if he has been correctly informed, there are now, or at least there were some time since, to be found marked on this plat, in pencil, several gold-veins run-
49 ning in a different direction from that in which the veins of gold in that part of the country are known to run; and upon one of these, within the boundary of the land sold, and at a considerable distance from the actual location of the shaft on the Vancluse & Melville vein (as shown by the map filed with the bill) is marked the shaft which, it is alleged, was untruly represented to be upon the land sold.

The theory of the plaintiffs until they had the survey made, the map of which is exhibited with the bill, being that said shaft was really within the boundaries of your respondent's land, as laid down on the plat; and that the mistake arose from the inaccuracy of the survey upon which the plat was founded, whereby your respondent was led to suppose that his boundaries included more land than they really did, the shaft being within the limits thus erroneously supposed to be included—a theory that had to be abandoned when the survey was made in December last under the direction of the plaintiffs, the map of
50 which, filed with the bill, shows that not only were the boundaries correctly laid down on your respondent's plat, but that the number of acres contained in them was really somewhat larger than the plat called for.

Your respondent calls upon the plaintiffs to produce and file this plat, and to say when and by whom the pretended gold-veins were marked upon it, and he calls upon them also to produce and file the map or plat exhibited by their agent Bowman, at Orange Court-House, and also the prospectus or statement which accompanied it, or was shown by him, and to say when and by and whose authority the same were prepared.

You respondent has answered fully as to the matters referred to in the special interrogatories of the bill, and is advised that it is not necessary for him to respond particularly to these interrogatories, inasmuch as to do so would be merely to repeat, in a different form, what he has already stated.

Your respondent denies the truth of each and every allegation
51 in the bill which conflicts or is at all inconsistant with this answer. He denies that he, or any one authorized to act for him, has been guilty of the slightest fraud, misrepresentation, or concealment; and avers that there was not one word said respecting said land, or its gold-bearing qualities, either by himself or by any one in his hearing that was not strictly true. If your respondent had heard any remark indicating that any one supposed that a shaft was on the land then owned by him, he would *have* once have corrected it, for he knew very well that there was no shaft upon it.

Your respondent does not admit that the plaintiffs had any sufficient ground for the belief that the land purchased by them had any shaft upon it, nor that they did in fact entertain any such belief. If it shall be shown that they did, he does not admit that such belief entered materially into the consideration of the contract made by them.

Your respondent respectfully insists that the plaintiffs have no
52 right to the relief prayed for by their bill, nor to any other relief, as against him; and that on the contrary, they are bound to complete their contract by paying the portion of the purchase-money which is still due. Of this amount your respondent will be entitled to $10,000, and the interest which has accrued thereon, and Richard H. Catlett to $2,500 and its interest. And as the plaintiffs, by bringing this suit, have given the court jurisdiction over the whole matter, he asks for a decree against them accordingly.

Your respondent submits that it is proper, in order that full and complete justice may be done in the premises, that said Catlett be made a party to this suit, and he asks that the plaintiffs be required to amend their bill and make him a party.

And, now having fully answered, your respondent prays that after the relief to which he is entitled as against the plaintiffs has been granted, he may be hence dismissed with costs, &c.

PEYTON GRYMES.

53 STATE OF VIRGINIA,
Orange County, to wit:

I, William R. Taliaferro, a notary public for the county of Orange, in the State of Virginia, do hereby certify that Peyton Grymes, the respondent in the foregoing answer to the bill filed in the circuit court of the United States for the district of Virginia, by George S. Repplier and James Lanigan, against him, and whose name is signed to said answer, this day personally appeared before me, in said county of Orange and State of Virginia, and having been by me duly sworn, made oath that the said answer is true to the best of his knowledge, information, and belief; the facts therein stated as of his own knowledge being true and those stated on the information of others being believed by him to be true.

Given under my hand and with my seal as notary, hereto attached, the 8th day of October, A. D. 1868.

[SEAL.] W. R. TALIAFERRO, *N. P.*

54 STATE OF VIRGINIA,
City of Richmond, to wit:

I, George Chahoon, a commissioner of the United States for the district of Virginia, do certify that Peyton Grymes, the respondent in the foregoing answer to the bill filed in the circuit court of the United States for the district of Virginia, by George S. Repplier and James Lanigan, against him, and whose name is signed to the said answer, this day personally appeared before me, in said city of Richmond and State of Virginia, and, being by me duly sworn, made oath that the said answer is true to the best of his knowledge, information, and belief; the facts therein stated as of his own knowledge being true, and those stated on the information of others being believed by him to be true.

Given under my hand this 15th day January, 1869.

GEORGE CHAHOON,
U. S. Commissioner.

55 *Exhibit A, with answer of Peyton Grymes.*

EXHIBIT A.

This deed, made this 21st day of March, in the year one thousand eight hundred and sixty-six, between Peyton Grymes and Harriet S., his wife, of the county of Orange, and State of Virginia, parties of the first part, and James Lanigan and George S. Repplier, of the State of Pennsylvania, parties of the second part, witnesseth, that the said Peyton Grymes and Harriet S., his wife, for and in consideration of the sum of twenty-five thousand dollars, ($25,000,) good and lawful money of the United States, to them in hand paid by the said James Lanigan and George S. Repplier at and before the sealing and delivery of these presents, the receipt whereof they do hereby acknowledge and thereof acquit and forever discharge the said James Lanigan and George S. Repplier, their heirs, executors, and administrators, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said James Lanigan and George S. Repplier, and unto their
56 heirs and assigns, with general warranty, two certain tracts or parcels of land, situate, lying, and being in the county of Orange & State of Virginia, containing respectively eighty-two (82) and three hundred & eighteen and seventy-hundredths (318.70) acres, making in the ag'regate

four hundred and seventy-hundredths (400.70) acres, be the same more or less, saving and reserving the family grave-yard thereon, with right of way to the same; said two tracts or parcels of land adjoining the land formerly sold & conveyed by said Grymes and wife to one W'm K. Smith; and being all the land now owned and possessed by said Grymes of the land devised to him by the last will and testament of his mother, Sarah Grymes, deceased, which said last will and testament was duly admitted to probate in the county court of Orange County on the 23d day of July, 1832, together with all the estate, title, interest, & property, claim and demand whatever of them, the said Peyton Grymes & Harriet S., his wife, in law or equity of, in, to, or out of the same. To have and to
57 hold the said two tracts or parcels of land, & every part or parcel thereof, with their appurtenances, saving and except the family grave-yard and right of way thereto above reserved, unto the said James Lanigan and George S. Repplier, their heirs and assigns forever; and unto the only proper use and behoof of them, the said James Lanigan & George S. Repplier, their heirs and assigns forever.

And the said Peyton Grymes covenants to & with the said James Lanigan and George S. Repplier that he has the right to convey the said lands to them; that he has done no act to encumber the said lands; that they shall have quiet possession of the said lands, free from all encumbrances; & that they, the said parties of the first part, will execute such further assurances of the said lands as may be requisite.

Witness the following signatures and seals:

PETER GRYMES. [SEAL.]
HARRIET S. GRYMES. [SEAL.]

58 STATE OF VIRGINIA,
County of Orange, to wit:

I, Richard Chapman, a justice of the peace for the county aforesaid, in the State of Virginia, do certify that Peyton Grymes, whose name is signed to the writing above, bearing date the day of March, 1866, has acknowledged the same before me in my county aforesaid.

Given under my hand this 21st day of March, 1866.

RICHARD CHAPMAN, *J. P.*

STATE OF VIRGINIA,
Orange County, to wit:

We, Richard Chapman & Joseph H. Houseworth, justices of the peace for the county of Orange, in the State of Virginia, do certify that Harriet S., the wife of Peyton Grymes, whose names are signed to the writing above, bearing date the 21st day of March, 1866, personally appeared before us privily and apart from her husband, and having the writing aforesaid fully explained to her, she, the said Harriet S., acknowledged the said writing to be her act, and declared that she had willingly executed the same and does not wish to retract it.

Given under our hands this 21st day of March, 1866.

RICHARD CHAPMAN, *J. P.*
JOSEPH H. HOUSEWORTH, *J. P.*

59 ORANGE COUNTY, *to wit:*

I, Richard Chapman, a justice of the peace for the county aforesaid, do certify that the foregoing is a true copy from a deed from Peyton Grymes and Harriet S., his wife, to James Lanigan and George S.

Repplier, and which is deposited with Thomas A. Robinson, of Orange C. H., Va., as an escrow.

Given under my hand this 30th day of May, 1868.

RICHARD CHAPMAN, *J. P.*

Exhibit B, with answer of Peyton Grymes.

EXHIBIT B.

We, George S. Repplier and James Lanigan, promise and bind ourselves to pay to Peyton Grymes, his heirs, &c., the sum of $ twelve thousand five hundred dollars, with interest, within six months from the date hereof, it being the second and last instalment of the purchase-money for the Vancluse gold-mine property, in the county of Orange, State of Virginia, for which a deed with general warranty has been duly executed by the vendor, and deposited as an escrow with Thomas A. Robinson, esq., at Orange C. H., Va., to be delivered to the
60 undersigned upon payment of this bond.

Witness our hands & seals this 7th day of April, 1866.

(Signed) GEORGE S. REPPLIER. [SEAL.]

(Signed) JAMES LANIGAN. [SEAL.]

ORANGE COUNTY, *to wit:*

I, Richard Chapman, a justice of the peace for the county aforesaid in the State of Virginia, do certify that the foregoing is a true copy of a writing, signed by George S. Repplier and James Lannigan, and deposited with Thomas A. Robinson, of Orange C. H., Va.

Given under my hand this 30th day of May, 1868.

RICHARD CHAPMAN, *J. P.*

R. H. Catlett made a party defendant.

Thereupon the following order was made, upon the suggestion of the defendants, that Richard H. Catlett, of Augusta County, Virginia, should properly be made a party defendant to this suit, and with the consent of the plaintiffs it is hereby ordered that the said Catlett be made
1 Bill amended. a defendant thereto, and that the plaintiff's bill be amended by inserting the name of the said Catlett as one of the defendants.

By stipulations either party to take depositions, &c.

And it is furthermore ordered, in accordance with a written stipulation, signed by the plaintiffs' and defendant's counsel, herewith filed, that either party may proceed to take depositions to be used in this cause, at any time before the first day of the next term of the court, and without taking out any commission, by giving reasonable notice to the counsel of the other party of the time and place of taking said depositions.

Stipulations referred to in the foregoing order.

STIPULATION.

We hereby agree that depositions may be taken in this cause by either party, at any time before the first day of the next term, and with-

out taking out any commission, by giving reasonable notice to the counsel of the other party of the time and place of taking said depositions.

Dec. 5th, 1868.

W'M H. GINENS,
Counsel for Repplier & Lanigan.
JAMES ALFRED JONES.
Counsel for Def't, Peyton Grymes.

62 *Subpœna in ch'y served on R. H. Catlett.*

In accordance with the foregoing order, a subpœna in chancery was duly served on Richard H. Catlett, on the 15th day of December, 1868, summoning him to appear at January rules, 1869, and answer the complainants' bill in this cause.

Answer of R. H. Catlett.—Filed at rules.

And at another day, to wit, at rules, held in the clerk's office of said court, on the first Monday of April, 1869, came the defendant Catlett, by his attorney, and filed his answer, which is as follows:

63 The separate answer of Richard H. Catlett, a citizen of the town of Staunton, in the State of Virginia, to a bill of complaint exhibited against a certain Peyton Grymes and himself in the circuit court of the United States in the district of Virginia, by George S. Repplier and James Lanigan, who style themselves citizens of the State of Pennsylvania.

This respondent, saving to himself the benefit of all proper and legal exceptions to said bill, for answer thereto, or to so much thereof as he is advised it is material he should make answer unto, says that, in the year 1866, this respondent was a land agent, as he is now, engaged in selling mineral and agricultural lands upon commission, and by means of printed circulars and newspaper advertisements solicited the sale of lands from the owners, and advertised the sale of lands to purchasers. In the latter part of the year 1865, or early in 1866, this respondent visited the house of his co-def't, Dr. Peyton Grymes, to whom he
64 was well known, and learning, whilst there, that Dr. Grymes was offering for sale a tract of land owned by him, that respondent had always understood to be a valuable gold property, respondent solicited from Dr. Grymes the sale of the property, and represented to him that, by reason of his acquaintance with northern capitalists seeking investments in the mineral lands of the South, that he thought he could find him a purchaser for the property. Dr. Grymes replied that his price for the property was $20,000, and that if respondent could sell the property for that price, he, respondent, might have all he could get over that price for his compensation. In other words, Dr. Grymes authorized respondent to offer said property for sale, and to sell it if he could realize $20,000 or upwards for it, and agreed to confirm any sale that respondent could make on those terms, and would give to respondent, as his compensation for making the sale, the excess over the sum named. On account of the long existing and friendly relations between respondent and said Grymes, respondent did not propose to him, as was his custom unto others, to enter into a written agree-
65 ment in relation to the matter, but proceeded to act upon the verbal understanding between them. Shortly afterwards respondent met with the plaintiff Lanigan and Mr. Howell Fisher, who

had visited Virginia for the purpose of examining some iron property that respondent, and those who were acting with him, had in hands for sale, and knowing that these gentlemen were looking out for good speculations, investments in mineral property, either for themselves or their friends, respondent called their attention to this gold property of Dr. Grymes, and represented to them that he believed it to be exceedingly valuable property. There was about this time, as your respondent was informed, great enquiry among northern capitalists for gold-bearing property in Virginia, and such property was eagerly sought after by parties seeking speculative investments. Mr. Lanigan was pleased with the description given of the property, and desired that Mr. Howell Fisher should go and make an examination of it, and said, if Mr. Fisher reported favorable, he, Lanigan, would probably raise a party to buy it. It being then arranged that Mr. Fisher should visit the
66 property, your respondent immediately wrote to his brother-in-law, Peyton Grymes, son of his co-def't, and his general manager, informing him that respondent and said Fisher would be at Orange C. House on a certain day, and requested him to provide some means of taking them to see the property. While respondent wrote to young Grymes he really designed the communication for his father. The advanced age of his co-def't Grymes, which unfitted him for so long and hurried a ride, also prevented respondent from calling directly on him instead of his son to accompany them. Your respondent, however, had no doubt about having the property accurately pointed out by young Grymes, who, at one time, had resided upon it. The property being wholly unknown to respondent and said Fisher, without some one to show it to them no visit could have been more idle and useless to all the parties concerned, and your respondent took it for granted that young Grymes accompanied them with the knowledge and consent of his father. Respondent and Fisher proceeded, with young Grymes, to visit the property, and reached the ground about dark. To en-
67 able the said Fisher to leave early the next morning, so as to reach Orange C. House in time for the train, young Grimes sent for his nephew Hume, who was living upon the property, and at the time washing for gold, to show the property to respondent and Fisher, while he was hitching up his horses, stating that Hume knew the property as well as he did. The property had long been in the possession of the def't Grimes, and had been cultivated as a farm, as well as used for its gold purposes; and your respondent never doubted that, as such, its boundaries, like those of other farms, were clearly defined and well known, and your respondent hadn't the faintest idea that any error could possibly be made by Hume in pointing it out. Your respondent left the ground as fully satisfied as Fisher could have been, that the shaft pointed out was upon the property. Respondent does not remember what was said by young Grymes or by Hume in his presence in relation to the shaft, but whatever it may have been, if any thing was said, it must, from respondent's ignorance of the boundaries, necessarily have passed uncontradicted by him. Your respon-
68 dent had, from boyhood, heard the Vancluse gold property spoken of as the best gold-bearing property in Va., and had frequently heard, he thinks, from his co-def't himself, that he had gotten from the property some eighty-odd thousand dollars in gold. Your respondent was naturally anxious that Fisher should learn everything concerning the property which could give him a just idea of its value, and was pleased when it was found that he, Fisher, would be detained long enough in Orange to see and converse with Dr. Grymes in relation to it. Finding,

when they reached Orange C. House, that the train had passed, respondent and Fisher went immediately to Dr. Grymes. Your respondent's sister having married young Grymes, who occupied a building in the yard near his father's dwelling, respondent left his co-def't Grymes & Fisher together for the larger part of the evening, and while respondent heard some of the conversation between them in relation to the property, much may have been said while he was not present. Your respondent does not remember what was said by said Grymes in his hearing, except that it generally went to confirm the popular idea of the value of the property.

69 While your respondent was in Ph'a negotiating the sale to the plaintiff, he received a letter from W. G. Williams, of Orange, informing him that Dr. Grymes was anxious that the sale of the property should be consummated, and instructed him to say to respondent that he would give him a commission of 10 per cent. upon the price he had named, (of $20,000) if the sale was effected. When, subsequently, respondent collected the hand-payment from the plaintiffs as att'y for said Grymes and brought it to him, he offered respondent $1,000, which he declined to take, not upon the ground simply, as the said Grymes alleges, that he, respondent, thought he had been well enough paid, but, as he distinctly stated to said Grymes, because the negotiation of sale had been substantially concluded before his message was received, and that respondent did not think under the circumstances that either he or those acting under him could justly and properly demand it.

And now having fully answered, your respondent prays to be dismissed hence with his costs, &c.

R. H. CATLETT.

70 STATE OF VIRGINIA,
Augusta County, to wit:

I, N. P. Catlett, a notary public for the county of Augusta, in the State of Virginia, do hereby certify that Richard H. Catlett, the respondent in the foregoing answer to the bill filed in the circuit court for the United States for the district of Virginia, by George S. Repplier and James Lanigan against him et al., and whose name is signed to said answer, this day personally appeared before me in said county of Augusta, and State of Virginia, and having been by me duly sworn, made oath that the said answer is true to the best of his information, knowledge, and belief.

Given under my hand and with my seal as notary public hereto attached, this 20th day of March, A. D. 1869.

[SEAL.] N. P. CATLETT, *N. P.*

71 The following depositions were read as evidence in this cause:

72

73 Depositions on the part of the plaintiffs, taken before Richard M. Batturs, notary public, Philadelphia.

James W. Paul, attorney for plaintiffs.
James A. Jones, " " defendant.

GEORGE S. REPPLIER, affirmed, says: I purchased, with Mr. James Larning, in 1866, property in Orange County, in the State of Virginia.

Dr. Peyton Grymes was the owner. I dealt with R. H. Catlett in making that purchase. He resided in Staunton, Virginia. Our attention was first called to it some time in the winter of 1866, by Mr. Catlett. I dealt with Mr. Catlett as agent for Dr. Grymes. He represented it to us as gold property; exhibited to us a number of papers in regard to the property, showing that a portion of this property had been sold some years before to the Liberty Mining Company.

Plat with accompanying descriptions shown witness, hereto annexed, marked Exhibit A. Witness says this is one of the papers ex-
74 hibited to me at the time by Mr. Catlett. This plan, to the best of my knowledge, is in all respects as shown to me at that time. At the strength of what transpired at that time we sent Mr. Howell Fisher to look at the property. We had several interviews with Mr. Catlett. He never, at any of those interviews, dealt as owner or principal, but always as agent of Dr. Grymes. My impression is, Mr. Catlett exhibited to me power of attorney from Dr. Grymes. (Papers shown witness, marked Exhibit B.) Witness says this a copy of power of attorney exhibited to me by Mr. Catlett. Mr. Fisher, as our agent, went to Virginia to ascertain whether the facts stated by Mr. Catlett were true. He reported favorably.

(Statement objected to and stricken out.)

In consequence of what he stated to us we closed the purchase. After the purchase was closed, Mr. Lanigan, Maj. Bowman, my son, and myself visited the property. We arrived in the neighborhood late in the evening; stopped with Mr. Johnson. The next morning in company with Mr. Johnson, P. G. Hume, we visited the property. Mr. Hume was a grandson of Dr. Grymes, and was then in charge of
75 the property for us. I think he had previously had charge of it for Dr. Grymes. We went over the place and among other places. Mr. Hume took us to this shaft which we were very anxious to see. Mr. Johnson then said that shaft was not on our property; then a dispute arose between Mr. Hume and Mr. Johnson as to the line of the property, Mr. Johnson contending that the line was between the mansion-house and the shaft; Mr. Hume contending that it was north of the shaft. After listening to Mr. Hume and Mr. Johnson about the shaft in question, my suspicions were aroused that the shaft in question was beyond the line of the land I purchased. In consequence of this difficulty about the lines, we concluded that Mr. Lanigan should go to Orange Court-House and see Dr. Grymes, Major Bowman, my son, and myself returning home.

We bought this property with a view to working it as gold property. I had no knowledge prior to the execution of the deed of this property, except from Mr. Catlett and Mr. Fisher. I had not visited the property.

I discovered the representation of Mr. Catlett in regard to the
76 shaft was untrue. (Excepted to.) It was not on the property sold me. Wholly upon the representation of that shaft and its situation we made the purchase. The deed was executed and half the money paid before I made the discovery about the location of the shaft. Mr. Lanigan went to see Dr. Grymes to ascertain whether the shaft was on the land we purchased, and, if not, to inform him we would throw the land up. No timber was cut down by my knowledge or consent after we took possession of the property. I cannot tell how long we continued in possession; no roads were cut through the land at any time to my knowledge. I think we subsequently caused notice to be given to Mr. Grymes of the rescinding of this contract. After arriving home and Mr. Lanigan's return we concluded to send Maj. Bowman back to the property

for the purpose of ascertaining whether other statements in regard to other gold-veins being on the property were true. I do not know what Major Bowman's occupation was except he was in the Army.

(Paper marked Exhibit C shown witness.)

This is a letter I received from Dr. Grymes' agent, R. H. Catliff.

77 (Before receiving the letter in evidence, James A. Jones, esq'r., attorney for Dr. Grymes, objects as inadmissible in evidence.)

Major Bowman subsequently returned & made a report to me, & in consequence of his report we gave Dr. Grymes notice of a rescis'ion of the contract.

X-examined:

Question. You spoke of Mr. Catlett exhibiting a map and other papers in negotiating with you for the sale of the property. Please file the other papers so exhibited by Mr. Catlett.

Answer. My impression is all of the papers exhibited to me, now in my possession, are the papers attached to the draft except the paper marked Exhibit D, which I think is in Mr. Catlett's handwriting. My impression is Exhibit A is an original paper, and the map filed with the bill is a copy. The writing in lead-pencil on the papers attached to the plan marked A was not on the paper when exhibited to me by Mr. Catlett, but are memoranda subsequently made by Major Bowman.

Question. Did you ever advertise the property in question, in

78 the newspapers, or by hand-bill, or otherwise? If so, please produce the advertisement.

Answer. Never, in any shape, way, or form.

Re-examined:

We bought the property to work it, and not to sell it for speculation. (Objected to.)

GEORGE S. REPPLIER.

Sworn to and subscribed before me this second day of March, A. D. 1869.

[SEAL.] RICHARD M. BATTURS,
Notary Public.

JAMES LANIGAN sworn, says:

Question. Did you make any purchases of land in Orange County, Virginia, in 1866?

Answer. Yes, sir.

Question. With whom did you negotiate respecting these purchases?

Answer. Mr. Catlett.

Question. Who was Mr. Catlett?

Answer. Agent for Dr. Grymes.

Question. Were your negotiations with Mr. Catlett on the basis of such agency?

Answer. Yes, sir. I never seen Dr. Grymes till six months after we purchased?

79 Question. You have spoken of Mr. Catlett as agent; for what purpose was he agent?

Answer. In sale for the property of Dr. Grymes.

Question. By Dr. Grymes do you mean the respondent in these equity proceedings?

Answer. Yes, sir.

Question. What representations were made by Mr. Catlett respecting the land he proposed to sell you for Dr. Grymes?

Answer. He represented it to be gold property; shafts on it, and adjoined the Liberty Mining Co.

Question. What did he state in reference to these shafts?

Answer. He said there were shafts on the property, from which there had been gold quartz taken from.

Question. What steps did you subsequently take in consequence of these representations & statements?

Answer. Mr. Fisher went out as my agent to examine the property.

Question. Did Mr. Fisher subsequently make a report of his examination to you?

Answer. Yes, sir.

Question. In consequence of what he told you, what did you do?

Answer. We purchased the property.

80 Question. Did you pay any portion of the price, and if so, how much?

Answer. We paid $12,500.

Question. Did you visit the property prior to the execution of the deed?

Answer. No, sir.

Question. Were there any other influences or statements that induced you to make the purchase, other than the statements of Mr. Catlett and the report of Mr. Fisher; if so, what were they?

Answer. There were none others.

Question. Had you any previous knowledge of this property before you saw Mr. Catlett?

Answer. No, sir.

Question. After the deed was executed did you visit the property? If you did, state who went with you, what you did, and what subsequent action was taken in consequence of that visit.

Answer. Four or five months after the execution of the deed, Mr. Reppler, Major Bowman, Harry, & myself visited the property. We found Mr. Hume, Dr. Grymes' grandson, in
81 charge of the property. We asked him to shew us the boundaries, & Mr. Johnson also with us. Mr. Hume took us to what he called the corner line; that line included the shaft spoken of on the map. After he had pointed out the line to us, Mr. Johnson called me one side, and said that was not the line that Hume was showing us; that he did not want to have any trouble about it. After we discovered the shaft was not on the property we purchased, I went to see Dr. Grymes, and was informed he was sick, & could not be seen. I subsequently met Dr. Grymes and Catlett by appointment at Orange Court-House, to settle this matter, & Dr. Grymes told me then it would be impossible to do anything now, as he had loaned out the money & could not get it back. Catlett suggested that I take a mortgage for it, to which I agreed; a mortgage to secure the money. The Dr. was to let me know in a week or ten days, but I have never heard from him in reference to it since.

Question. Had you prior to this conversation with Dr. Grymes notified him of your intention to rescind the contract?

Answer. Yes, sir, we had; through Major Bowman, and, I think, myself.

82 Question. In this interview, did you state to him the reason why he should return to you the money, and, if so, what was that reason?

Answer. Why, that we did not get the property we purchased.

Question. Why?

Answer. The shafts that were on the map, and which induced us to buy the property, were not on the line.

Question. What reply did Dr. Grimes make to this statement?

Answer. I really don't recollect what the reply was.

Question. Have you stated all the objections that were made at the time by Dr. Grymes to the rescis'ion of the contract and the return of the purchase-money?

Answer. Yes, sir; I think I have; all I recollect.

Question. Did he deny that there had been a mistake in the location of the shaft?

Answer. No, sir; the question of lines did not come up. I went for a settlement, and it was conceded by everybody there had been a mistake in the location of the shaft.

Question. In this interview did Dr. Grymes deny the agency of Mr. Catlett to sell the property?

(Excepted to as leading; question withdrawn.)

83 Question. State what was said at this interview by Dr. Grymes in reference to Mr. Catlett's agency in sale of the property.

Answer. Nothing.

Question. Did you state to Dr. Grimes what representations had been made by Mr. Catlett to induce you to purchase the property?

Answer. I said this to Dr. Grimes, We might have avoided this trouble had we sent a surveyor down, but that Mr. Catlett said he, Dr. Grymes, was a high-toned, honorable man, & if anything was not right we would get our money back.

Question. Did you mention to Dr. Grymes Mr. Catlett's statement to you in reference to the location of the shaft; and, if so, did he dispute Mr. Catlett's authority to make that statement?

Answer. I did not mention it.

Question. How long after the payment of the purchase-money were you first informed of the mistake of the location of the shaft?

Answer. It must have been four months, when we first visited the property, and we directed a survey to ascertain the truth of the location.

Question. Was this survey subsequently made?

84 Answer. Yes, sir.

Question. Who made that survey?

Answer. Mr. Hotchkiss, of Staunton, Va., and Allen Fisher.

Question. Did they report to you the result of that survey?

Answer. They did.

Question. How long after this survey was reported to you was notice given to Doctor Grymes of the rescis'ion of the survey?

Answer. The survey referred to was made after the notice of the rescis'ion of the contract.

Question. What has been the state of possession of the land since you determined to abandon or rescind the contract?

Answer. I really don't know anything about it.

Question. Has any timber been cut down or roads cut through by your authority or consent?

(Excepted to as leading.)

Answer. No, sir; I have never assumed any authority or ownership.

Question. Have you any knowledge whatever of any injury being done to the property?

Answer. No, sir.

Question. What was your object in buying this property?

Answer. To work it, and not for speculative purposes.

85 Question. Have you ever offered this property for sale by handbills, advertisements, or otherwise?

Answer. No, sir; never.

X-examined declined.

JAMES LANIGAN.

Sworn to and subscribed before me this third day of March, A. D. 1869.

[SEAL.] RICHARD M. BUTTURS, *N. P.*

HOWELL FISHER, sworn, says:

Question. Were you employed in 1866 by George S. Repplier & James Lanigan to visit a property in Orage County, Virginia, owned by Dr. Grymes, concern which negotiations were pending for its sale? If aye, state in detail all that you did in pursuance of that appointment.

Answer. Mr. Lanigan and I were in Southwestern Virginia with Mr. Catlett to examine a property which Mess'. Repplier & Lanigan were thinking about purchasing, and, on examination, Mr. Lanigan and I decided the property was not what it was represented to be, & started to return home with Mr. Catlett. Mr. Catlett stated, on our way to

86 Lynchburg, that Dr. Grymes, of Orange Court-House, was the owner of a gold property in Orange County; that he was authorized to sell it. He thought it was valuable, and was desirous that Mr. Lanigan & I should look at it. He stated the Dr. was an old gentleman, and was desirous of closing up his property, and it could be had at what he thought a low figure. Mr. Lanigan said it was impossible for him to go, but if I thought advisable, to go with Mr. Catlett, examine the property, and report upon it. I agreed to go provided I would not be detained over one day. Mr. Catlett said the road most of the way was planked, and we could get from Orange Court-House readily in one day and back again for the next noon train, by his communicating with Dr. Grymes' son and having a team to take us immediately to the property, and that he would have ample time by writing from Lynchburg. After visiting Buena Vista Furnace, Mr. Lanigan, Catlett, and I started for Orange Court-House. On arriving there Mr. Catlett and I left the train, Mr. Lanigan proceeding on, I remaining behind as the agent and representative of Mr. Lanigan. We found Dr. Grymes' son at the depot with a carriage and a pair of mules. We started and got a mile from the town, when the Dr.'s son sent to the house, and got something to eat, and we proceeded to view the property. It was quite dark when we arrived

87 upon the property, owing to the slowness of the mules. We drove to the mansion-house, and was no one there but the females in charge. At the suggestion of Dr.'s son, we agreed to get up at day-light to examine the property, so as to reach the cars in time. We got out of the house just as it was light. We started from the mansion-house out the road for one hundred yards or so, when the doctor's son said he would go for Mr. Hume, who knew about the property, and would show us the property, and he would go and harness up the mules. We met Mr. Hume a few minutes afterwards. He took Mr. Catlett and I to a small

stream to the right of the road going from the house; he pointed out a place on this stream, where he was washing gold by permission of Doctor Grymes. At the time we were talking on the road, Dr. Grymes' son spoke about a shaft which he wished me to see, and Mr. Hume could show the shaft to us. From the stream Mr. Hume led us directly to the shaft; when we arrived there I inspected the quartz. The debris upon the ground was examined pretty thoroughly to see what the surrounding rocks were. Mr. Hume pointed out in the distance, probably a hundred yards or so, what he said was the working shaft of the
88 English company on this same vein. The supposed line of this vein was pointed out to me running what I supposed to be to the east corresponding to the elevated hill on which the house stood, on which it was said there was another vein of quartz. After a few minutes we heard the Dr.'s son calling for us as he was ready. The shaft was pointed out as a portion of the property they wanted to sell. We then started for the Dr.'s son, and the carriage which was standing out on the road. Before we had left the property the doctor's son had pointed out the supposed line of the quartz vein running under the house, and which he thought was a richer one than the vein on which the shaft was. And during the ride to Orange Court-House the shaft I had been to visit was the subject of conversation. The doctor's son stated to me that his father had, by the old Chilian process, got out of a barrel of quartz taken from this shaft twenty or twenty-four dollars in gold. All my inquiries were upon the subject of this shaft and the yield, and the surrounding rocks. We arrived too late for the train, and we were taken to the Dr.'s house & found him there. I staid there from 1 p. m.,
89 to midnight. After dinner the subject of this property was introduced in the presence of the doctor, his son, a friend, (who said he had worked upon this property,) Mr. Catlett, & myself. Its value as gold property was discussed generally, and the story of the yield of the barrel from this shaft was repeated. During this interview the Doctor produced a map of this property, being a survey of what he had left. It showed the amount four hundred acres, as represented by Mr. Catlett, and the Dr. stated generally his title to the property. On my return home I first saw Mr. Lanigan. I stated to him what I had seen upon the property, this shaft, and what information I had got in regard to it. He then requested me to speak to Mr. Repplier, and I had an interview with him on the subject. I repeated in substance to Mr. Repplier what I had to Mr. Lanigan, especially in relation to this shaft, and Mr. Lanigan and Mr. Repplier both agreed with me this was a valuable vein of gold, and could be made profitable. This vein was represented to be upon the Vaucluse vein worked by the Liberty Mining Company, and the shaft was represented to be on that vien, and is so. I communicated with Mr. Catlett, and he came on here, and I was
90 present with him when the negotiations were closed in Mr Repplier's office, 329 Walnut st.

Question. You have stated that you made a favorable report of the property to Messrs. Lanigan and Repplier; upon what facts was that report founded?

Answer. It was founded solely on my belief in the value of the vein on which the shaft was situated. If I had not understood the vein was upon that property, I should not for one moment entertained the idea of recommending the purchase by Repplier and Lanigan.

Question. In your conversations with Mr. Catlett and Dr. Grymes in which the subject of this shaft and vein was introduced, was anything stated to induce the belief that the shaft and vein were not upon the

property proposed to be sold to Messrs. Lanigan and Repplier; if so, what was there stated?

Answer. There was nothing stated to induce me to believe it was not upon the property, and I left under the full belief it was there, and that induced me to report favorably. During the whole of this visit Mr. Catlett was with me. I subsequently visited Orange Court-House to inspect the records. During this visit there was no discussion or dispute as to the boundaries of this property.

91 Question. When you were on the land, was there any dispute as to the boundaries of the property proposed to be sold or any offer to send for a person to point out the same to you?

Answer. There was no discussion about the boundaries. This shaft and the course of the vein was pointed out to me as on the property. There was something said about the woodland which was off the gold-bearing range, and I said I did not care about the woodland; we wanted the gold-bearing property.

Question. Was there any offer made to send for any one to point out the boundaries?

Answer. None, sir.

Question. Were there any statements made during this interview in reference to surface-gold?

Answer. There were none made upon the land, but either during the ride home or at the doctor's house, that matter was discussed. Mr. Catlett said the Dr. had made a great deal of money by washing surface-gold in a rude unbusinesslike way, by turning his hands in when they were not otherwise employed. Nothing was said during this interview by any one to induce the belief or impression that nothing but surface-gold had ever been taken by Dr. Grymes from this property proposed to be sold. My impression is the contrary, that the work-

92 ings had been principally confined to the shaft, although the Dr. stated he had washed gold upon other portions of the property.

X-examined:

You speak of Dr. Grymes showing you the map of his property on the occasion of your first visit; where is that map?

Answer. I cannot say of my own knowledge. The last I saw it was in Mr. Repplier's office. I think it is on file in the office with the papers. It is identified by an endorsement of Mr. Catlett.

Question. Examine Exhibit A, filed as a part of the testimony of Mr. Repplier, and state whether the map & within statement attached to it are papers that were placed in your hands by Mr. Catlett or not.

Answer. The map is a copy of the map exhibited by Mr. Grymes with certain exceptions, and the report is in my handwriting. The exceptions are I do not recollect that the point, marked shaft, was upon the original map shown me by Dr. Grymes. The location of the shaft was marked by me in the presence of Mr. Catlett. I am positive it was not on the original map. Mr. Catlett and myself fixed the point, marked shaft, as the point where the shaft was located. There was no road running by the shaft. Mr. Catlett and I agreed that was

93 the road marked on the original map, and from the information I had received there I had marked out the gold-veins as I understood them to be pointed out. My recollection is that on the original, of which this is a copy, the gold-veins marked here were traced out in yellowish lines. My belief is that was done subsequent to my first visit to Dr. Grymes, but I cannot tell by whom—subsequent to the time I first saw the map. And I located the shafts and the gold-mines from conver-

sations with Mr. Catlett, and the doctor's son, and the other information I received during my visit. Mr. Catlett and myself made a pencil note of this shaft upon the original, and we thought we were perfectly correct. Mr. Catlett agreed with me perfectly. My impression is that the pencil-marks on the original were made at the doctor's house, but I may be mistaken, but they were assented to by Mr. Catlett. This map and my report, Exhibit A, were submitted to Messrs. Lanigan & Repplier before the sale was closed, and constituted my report.

Question. I suppose the map was delivered to and brought by you on your return to Philadelphia, and laid, together with your report, before Messrs. Repplier & Lanigan?

94 Answer. I can't remember how that was; I know that we had the map here before the sale was closed, but cannot tell whether I or Mr. Catlett brought it. I think the probability is I brought it, but have no definite recollection on the subject.

Question. State anything that you remember, showing that Dr. Grymes was sensible that you were under the impression that the shaft was on the land proposed to be sold.

Answer. I don't remember anything; it was treated in our discussions as an acceded fact, at least by me; the point was not mooted by any one. I, of course, did not call the doctor's attention to it, because I was fully under the belief the shaft was on the property.

HOWELL FISHER.

Sworn to and subscribed before me this third day of March, A. D. 1869.

[SEAL.] RICHARD M. BATTURS,
Notary Public.

95 HENRY BOWMAN, being sworn, says:

Question. Did you visit the lands of Dr. Grymes in Orange County, Virginia, at the request of Repplier and Lanigan?

Answer. I did.

Question. When was that visit made?

Answer. In the month of September, 1866.

Question. Had you previously visited the property?

Answer. I had.

Question. For what purpose was your last visit made.

Answer. With a view of searching for gold-veins, said to exist on the tract of land.

Question. Look on the paper marked Exhibit A, and say whether you have ever seen that document before.

Answer. I have. I had it with me on that occasion.

Question. For what purpose did you take it?

Answer. With a view of assisting me in my explorations.

Question. Look at the part of the plan where the shaft is indicated. Did you find that shaft on the premises conveyed to Messrs. Repplier & Lanigan?

Answer. I did not.

Question. Look at that portion of the plan where a gold-vein is marked as a part of the Vancluse gold-vein. State if that vein you

96 found upon the property or where?

Answer. To the best of my knowledge and belief it is north of the tract of land in question.

Question. Did you consult any one of experience to aid you in your investigation; if so, who?

Answer. I consulted Mr. Johnson, an old and experienced gold-miner, one who had been a long resident in the neighborhood, and who was formerly in charge of the inside workings of the Liberty Gold-Mining Co.

Question. Was the answer that you have made as respects the locality of the shaft, and the gold-vein, the result of the joint investigation of yourself and Mr. Johnson?

Answer. It was, in addition to which I received information from one or two other parties, whose names I do not now recollect, that the shaft and vein were not on the tract of land, but were on a tract of land which belonged to Scott & Slaughter, of Fredericksburg, Virginia.

Question. State whether you made other investigations and explorations on the land in question, and if so, the result.

Answer. I did, and by the sinking of numerous shafts at points where two veins were supposed to exist, but without satisfactory results, two shafts were sunk on the vein, which was said to run under the
97 mansion-house; this was at a point south of the road leading to the mansion-house. Three shafts were sunk on a supposed vein north of the road leading to the mansion-house; these three shafts run west of the two previously mentioned.

Question. How long were you occupied in making these investigations?

Answer. Between a week and ten days.

Question. Do you know, sir, whether any explorations were made at the instance of Messrs. Repplier & Lanigan by any other parties except Mr. Fisher and yourself?

Answer. None to my knowledge.

Question. In the process of your investigations, state what injury or devastation was done to the property.

Answer. To my knowledge, none was done, unless the shafting could be termed injury to the property.

Question. In your operations did you cut any roads through the property, or cut down any timber?

Answer. There were no roads cut or constructed, neither was there any timber cut down, to the best of my recollection.

Question. Did you communicate to any one down there the result of your investigations; if so, to whom?

Answer. The result of my investigations was a subject of general conversation amongst those residing in the immediate neighbourhood and with whom I conversed, the names of whom I do not now recol-
98 lect; tho' I might add that Mr. Johnson and *and* his son were among the number.

Question. Did you see Mr. Catlett there or in the neighbourhood?

Answer. I did not. The first and only time that I ever saw Mr. Catlett was at Orange Court-House, previous to my going down to make an exploration of the land.

Question. You have devoted some time and attention to mineralogy and geology; if so, state if such is the fact.

Answer. I have devoted time and attention to the study of both geology and mineralogy.

Question. Do you know for what purpose Messrs. Repplier and Lanigan purchased this property?

(Excepted to.)

Answer. From my instructions from Messrs. Repplier and Lanigan, I formed the opinion they intended working it themselves if the explorations had been successful.

Question. In consequence of this understanding, did you say or do anything while in Virginia that would lead any one to suppose there was any other disposition or use to be made of the property?

Answer. I did not.

Question. Had you any other map or plat of the property, except the one marked Exhibit A?

Answer. I had not.

99 Question. Did you before you made your explorations see Dr. Grymes?

Answer. I did, and on the day of my arrival at Orange Court-House.

Question. To the best of your recollection, state the conversation you had with the doctor on that occasion.

Answer. I called upon the doctor at his house, and during our conversation informed him that from a reliable source we had been informed that the shaft represented as being on the tract of land sold to Messrs. Repplier and Lanigan was not on the tract, but on an adjoining one. My impressions are that the doctor said to me then that he had supposed that the shaft in question was on the tract of land sold to Messrs. Repplier and Lanigan. I then informed him that I was going down to the tract to explore for veins said to exist there, and if without success, we should decline making the second payment of $12,500, and demand a return of the payment already made of a like sum, with the interest thereon.

X-examined:

Question. What did Dr. Grymes say to produce the impression that he thought the shaft in question was on the land sold Messrs. Repplier and Lanigan?

100 Answer. I formed the impression from the fact that he said he supposed it was on there.

Question. Is your recollection at this time distinct that Dr. Grymes did say that he had supposed the shaft was on the land?

Answer. It is.

Question. Who was present at this interview between Dr. Grymes and yourself?

Answer. My impression is that it was Captain Williams, an attorney at Orange Court-House, through whom I had access to the records of the county. I do not recollect of any one else being present.

HENRY BOWMAN.

Sworn to and subscribed before me this third day of March, A. D. 1869.

[SEAL.] RICHABD BATTURS,
Notary Public.

(Here follows map, marked page 101.)

103 VANCLUSE GOLD PROPERTY

Consists of two pieces, one of 318 $\frac{7}{10}$ acres, and the other of 82 acres, the larger piece being farm-land under cultivation, and the 82 acres distant 200 yards, woodland.

It is situated from 17 to 18 miles southwest of Fredericksburg, in the northeast corner of Orange Co., V'a, one mile south of the Rapidan River. This tract originally contained 800 acres, 200 of which was sold to the Liberty Mining Co., an English company, as a gold-property, and 200

acres more off the gold-range was subsequently bought by them, leaving the 400 acres now in the tract, which was reserved by the owner as the most valuable gold-bearing portion. The Liberty Co. paid £50,000 for the 200 acres gold territory, or at the rate of $1,250 per acre.

The machinery and fixtures of this co. were carried away by the rebels.

The only report of the workings of this co. was of 80 days' work in 1853, when their mill produced 556 oz. 6 dwts of gold, of a fineness of 943½ thousands'.

The vein or lode worked by this company is the most northerly
104 marke' on the annexed map, and was worked at the point marked "Old Vancluse mine." It runs through the Vancluse farm for some 1,200 yards. Has been opened and worked in a small way at several places. A flour-barrel full of the quartz from this vein, unselected and worked as taken from this vein on the farm in the old way, has yielded $500.00.

In addition to the lode or vein worked by the English co., there are two other large lodes upon this property marked on the map, and numerous veins are known which are contained in talcose and other slates, hydrated oxide of iron being the principal associated minerals.

Sometimes the auriferous belt widens out to 30 or 40 feet, and the lodes are seldom ever less than 5 feet.

The lode worked consists of fine parallel bands of quartz, all bearing gold.

Most of the gold obtained is very fine, being from .985 to .990.

The cleared land is good farm-land, mostly under fence, with good house, outbuildings, and stabling.

Labor can be procured in abundance at $1 per day in gold. The
105 necessaries of life and machinery can be as cheaply had as in Philadelphia.

The Vancluse farm was found to contain gold in 1832, and for a number of years it was worked as a deposit-mine before any veins were discovered, and always with good success.

A confederate soldier is now working with two hands, and washing from $12 to $15 per day. With the improved methods of working gold-ores, the use of the new pumps, which makes the cost of ridding shafts of water comparitively inexpensive, the great cheapness with which quartz can be mined at this locality, the cheapness of wages and materials, all combine to render this locality one of the most profitable in the country for gold operations.

It has been proved to be the richest portion of the gold-bearing range of the Atlantic coast.

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107 EXHIBIT B., R. M. B.

Know all men by these presents that R. H. Catlett, of Augusta Co., V'a, is hereby constituted and appointed my attorney in fact for me and in my name to affix to the deed of sale of the Vancluse property in Orange C'y, V'a, the revenue stamp required by the laws of the United States, and to obliterate the same; and, farther, to collect from Messrs. Lanigan and Repplier the purchase-money for the said property, and for me and in my name to receipt for the same, and to do any and all other things necessary to complete and perfect the sale; and I hereby

confirm and ratify the acts of my said attorney in the premises and effectually as if I was present and acting for myself.

Witness my hand and seal this 27th day of March, 1866.

PEYTON GRYMES. [SEAL.]

108 EXHIBIT C., R. M. B.

STAUNTON, VIRGINIA, *October 24th*, 1866.

DEAR SIR: Your favour of the 19th was duly received.

Dr. Grymes is an old & valued friend of mine, and I have therefore no desire to comment on his letter. I take it for granted, from my knowledge of him, that in taking the ground he does, he is acting under the influence of others, and is not following his own judgement. The legal points involved are beyond all question. With regard to the shaft on the map, I presume it was marked there by Mr. Fisher, to show its location, as I have no recollection of it. But it is the absence of the shaft itself, which was pointed out to us as on the land, and so represented to you by Mr. Fisher and myself, that constituted the gist of the matter.

The shaft and the vein to which it belongs turns out not to be on the land at all. The purchase, therefore, was a mistake, and made upon a representation of the agent of Dr. Grymes.

109 I thought in our transactions about this matter in Philadelphia that you were very particular, but I am now satisfied that it is the only way to do business, and it has taught me a lesson that I will not soon forget.

Most of the conversation held with Dr. G. about the property was by Mr Fisher, and he is perfectly familiar with all the facts, and repeated to you (I have no doubt) exactly what Dr. G. said to him.

Dr. G. knew that I was a member of a land-agency. I dealt with him apparently in my individual capacity, simply because of my intimate acquaintance with him, and from the fact that my partners were not known to him. Our local agents in Orange were also interested with us, and my personal interest, or compensation, was a very small matter.

I wish very much that Dr. G. would arrange the matter without a suit, as a chancery suit in V'a can be made an interminable affair if the lawyers wish to make it so. If, however, he has firmly made up his mind about the matter, I fear it will be impossible to move him. I am more anxious than you are to have it settled.

Yours, truly,

R. H. CATLETT.

S. S. REPPLIER, Esq'r', *Phil'a.*

110 I am going to West V'a to-morrow, and shall be absent from two to three weeks. I will write to you as soon as I return.

EXHIBIT D., R. M. B.

Liberty Mining Company. (100,000 *shares, at* £1.)

This is an English company which has purchased the Vancluse and Grymes mines, for which £50,000 was paid. The average yield of the ore is estimated at $8 per ton. Six shafts have been sunk, and preparations made for working a large quantity of ore. According to the directors' report, made Sept. 30th, 1853, the amount of gold produced

during the year, the mill running eighty days, was 556 oz., 6 dwts, of a fineness of 943½ thousand's. In December, 1853, the stamps were crushing 50 tons per day.

The vein or lode worked consists of five parallel bands of quartz, all bearing gold. Hydrated oxide of iron is the principal associated mineral, and the enclosing rocks are talco-micacious slates. Previous to
1852 the mine had been worked in two open cuts, to the depth of 60 feet, 75 feet wide, and 120 feet long. From a description of these
111 mines published in 1848, the following information is extracted :

The Vancluse mine is situated in Orange County, a mile south of the Rapidan River, about seventeen miles from Fredericksburg. It was discovered in 1832, and for a number of years worked as a deposit-mine before any veins were discovered. There are numerous veins now known which are contained in talcose and other slates. The gold is contained in quartz, and in the adjoining slates, which are much mixed with decomposed iron pyrites. Sometimes the auriferous belt widens out to 30 or 40 feet. The present establishment was commenced in 1844 by an English company, and extensive works were erected. A Cornish engine, of 120 horse-power, was connected with six Chilean mills and six batteries of stamps, of three stamp-heads each. The finer ores are ground in the Chilean mills, and the harder quartz-rock is stamped. The amalgamation is effected by the amalgamating bowls. The quantity of mercury annually consumed is stated at from 250 to 300 lbs. The amount of gold produced, however, is not given,
112 nor the quantity of ore ground and stamped. The gold obtained is very fine, being from .985 to .990.

113 STATE OF PENNSYLVANIA,
County of Philadelphia, ss :

I, Richard M. Batturs, a notary public duly commissioned by the governor of the Commonwealth of Pennsylvania, and residing in the county aforesaid, do certify that the depositions of George S. Repplier, James Lanigan, Howell Fisher, and Henry Bowman, were taken before, and reduced to writing, by me, at the office of Messrs. Repplier and Lanigan & Co., 329 Walnut street, in the said county, on March 1st, 1869, and by adjournment on the 2d and 3d days of said month.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this fifth day of March, A. D. 1869.

[SEAL.] RICHARD M. BATTURS,
Notary Public.

114 STATE OF PENNSYLVANIA,
City & County of Philadelphia :

I, Joshua T. Owen, recorder of deeds in and for the county aforesaid, do certify that Richard M. Batturs, whose name is attached to the foregoing papers, is and was, at the time of signing the same, a notary public, duly commissioned by the governor of the State of Pennsylvania, and his official acts as such notary are entitled to full faith and credit.

In testimony whereof I have hereunto set my hand and affixed my official seal this fifth day of March, A. D. 1869.

J. T. OWEN, *R'd'r.*
Per M. MYERS.

115 The depositions of Edwin R. Johnson, Edward Beale, John R. Spotswood, V. A. Houseworth, Joseph Embrey, Peyton G. Hume, Peyton Grymes, jr., and William G. Williams, taken in the

counting-room of drug-store of H. D. Taliaferro, at Orange C. H., V'a, on the 10th, 11th, 12th, 13th, and 14th days of August, 1869, by consent of parties, to be used as evidence in behalf of Peyton Grymes, in the chancery suit pending in the circuit court of the United States of the district of V'a, holden at Richmond, V'a, in which George S. Repplier and Janes Lanigan, citizens of the State of Pennsylvania, and plaintiffs, and s'd Peyton Grymes, a citizen of the State of V'a, is a defendant, s'd depositions being taken before the undersigned, William R. Taliaferro, a notary public for the county of Orange, State of V'a. William J. Robertson, counsel for the defendant Grymes, and Thomas J. Michie, counsel for the plaintiffs Repplier and Lanigan, being present.

The witness, EDWIN R. JOHNSON, having been first duly sworn, deposes and sayeth, in answer to question, as follows: 1st question by counsel for defendant, Grymes: State whether a certain Major Henry Bowman, as agent for the plaintiffs, made, within your knowledge,
116 any explorations for gold upon the land in controversy in this suit; and if he did, state when he did so, and the character and extent of such explorations.

Answer. He did make some explorations in September of the year in which the plaintiffs purchased the land, but they were very imperfect and incomplete in their character. I was with him four days, helping him to make them, and he had four other hands. We made three or four different cuts in the land; came at one place to a vein which, although it did not show gold, presented very favorable indications. I told him he ought to cut through it, and go deeper, and that he would probably find gold. I told him that I had other business and would be obliged to quit him at that time to attend to it, and he said if I quit he would quit, too; that he would examine no further. I did go away the next day, and he did not work more than a day longer, and then left for good without having cut through the vein. I still think that if he had cut through the vein he would probably have found gold, though of course I cannot tell with certainty. Whether he would have found gold at that particular place or not, he certainly ought to have examined further. I certainly would have made a further examination if I had been
117 looking for gold, and I have had twenty-three years' experience in mining for gold.

2nd question by same. State how near you live to the land in controversy in this suit, and what is, and has been, your occupation in that neighborhood for the last twenty-three years or thereabouts.

Answer. I live now, and have lived all the time for the last twenty-two or three years, within three or four hundred yards of the place, and have all the time been engaged in gold-mining in that immediate neighborhood. I have worked at the Vancluse and Greenwood mines, which are near it, and on other lands in that vicinity.

3d question by same. State whether you are well acquainted with the land in controversy in this suit, and whether or not you know anything of gold being found upon it, and by whom.

Answer. I know the land well, and know that there has been gold found upon it, and a great deal of gold, too; that is to say, surface-gold, but it has never been worked for vein-gold. The gold that I refer to as having been found on the land was found by the defendant, Grymes, and those working under him.

118 4th question by same. 4th. Did Maj. Bowman or any other person, for the plaintiffs, or the plaintiffs themselves, make any other

explorations for gold on the land in question, than you have already mentioned?

Answer. They never made any other explorations, as far as I know or have heard, and I think I would have certainly known it if they had, for I pass through the place pretty much every day.

5th question by same. State what would be the effect upon the market-value of the land as gold-bearing property, of its being publicly known that a professed miner like Bowman had made explorations upon it, and had not found gold, without its being known, at the same time, how imperfect those explorations really were?

Answer. It certainly would injure the sale of it very much.

Cross-examined:

1st question by counsel for plaintiffs. Mr. Bowman, in his deposition for the plaintiffs, says he counselled Mr. Johnson, and old and ex-
119 perienced gold-miner, &c., in reference to his explorations upon the land in question. Are you the Mr. Johnson then referred to? Did he consult you, and did you direct the points of his explorations and show him where the gold-veins were supposed to run through the land?

Answer. I am the person referred to, and Joseph Embrey and myself showed him where the veins were supposed to be.

2nd question by same. Did he, in conjunction with yourself, make examination at those points shown by you as supposed to bear gold?

Answer. He did.

3d question by same. You say, in y'r examination-in-chief, that his investigation at one of the veins was insufficient; that a vein was found, and you thought he ought to have explored it further. What sort of vein was found bearing, as you say, no gold, and why did you think it ought to have been explored farther?

Answer. It was a quartz-vein that did not show any gold when
120 we panned it, but he did not find out what was in it. He only worked on top of it. It was the usual character of vein that bears gold in that country.

4th question by same. How deep did he cut into that quartz, and how much did he take out and wash, finding no gold?

Answer. He took out many pansfull, and cut, I suppose, too or three feet before he went away.

5th question by same. When you proposed to go deeper, in hopes of finding gold, what reason did he give for disagreeing with you?

Answer. He said if I quit he would, for he wouldn't give a damn for the balance of the men that were working there. He gave no other reason; and this was said when I told him I had to go away to attend to other business.

6th question by same. Did he not remain there and continue his explorations after you left?

Answer. He did not more that a day or a day and a half, or the like of that.

121 7th question by same. Do you know that he did not make further exploration at that point after you left?

Answer. He worked for a day or a day and a half after I left at that same point, but he did not cut through the vein, I know, as I have frequently seen it since.

8th question by same. Do you remember how many cuts or shafts he cut or sunk at different points? If so, state the number and the depth and breadth of the cuts.

Answer. He made three cuts in one place, and one in another, making four in all, including the one upon the vein above referred to; s'd cuts being three feet wide—one about twelve feet deep, the balance about eight or ten feet deep, and all about ten or twelve feet long. The cut at the vein was about fifteen feet deep. As to the depth and width of the cuts, I speak from general recollections, not having measured them. In speaking of the cut upon the vein, I mean the cut that struck the vein. That cut was fifteen feet deep from the surface of the ground, but not more than two or three feet into the vein.

122 9th question by same. In all your explorations on that occasion, did you find any gold at all?

Answer. No, sir; I never found none, or I never saw any come out of the vein.

10th question by same. Have you, or any one else that you know of, found any gold on that land since?

Answer. I have never searched for any there, and have found none; but I have seen gold since that negroes have told me they found there on the surface.

11th question by same. Do you know whether Dr. Grymes has made any additional explorations since you and Bowman were there?

Answer. I know of no such explorations; and if there had been any, I think I should have heard of them.

12th question by same. Have you ever studied geology or mineralogy as a science?

Answer. No, and never expect to do it.

123 Re-examined by counsel for defendant Grymes:

1st question. The plaintiffs' counsel would seem from one of the questions asked you on cross-examination to have understood you to mean that the only particular in which Bowman's explorations were imperfect and incomplete was in his not cutting through the vein where you advised him to do so; was this your meaning? and, if it was not, say what was the character of his explorations in other particulars than this.

Answer. It was defective in that respect, but I did not mean to be understood that it was defective in that respect only. His explorations were very defective in other particulars. He did not make half as many cuts as he should have done. To explore for a vein he ought to have cut in a great many different places upon the land, which he did not do. I considered his explorations utterly insufficient in all respects. He made cuts in two places only; the three that I have referred to, besides that at the vein, were all pretty much at the same place; the one at the vein was some distance off.

Cross-examination resumed by plaintiffs' counsel:

Question. You are well acquainted with that land, you say, and directed Mr. Bowman's explorations; were not the points where he ex-
124 amined those which you and others considered most promising of gold?

Answer. I thought they were the most promising at that time, but he did not take time enough.

Question by same. How long would it have taken for him and three or four helpers to have made such explorations as you would have thought sufficient?

Answer. Until gold was found. Pits should have been dug clear across the land to make a thorough exploration, and as it was a large

place, it might have taken a great while, probably twelve months or longer, if gold was not sooner found.

And further this deponent sayeth not.

his
EDWIN + JOHNSON.
mark.

Witness:
W. R. TALIAFERRO, *N. P.*

Adjourned over until to-morrow morning, at eight o'clock, the same place.

W. R. TALIAFERRO, *N. P.*

AUGUST 11TH, 1869.—Taking of depositions resumed at the same place, the same counsel present as on yesterday.

EDWARD BEALE, another witness in behalf of defendant Grymes, having been first duly sworn, deposes and says in answer to questions as follows:

1st question by counsel for defendant Grymes: Please state
125 your name, age, and residence.

Answer. My name is Edward Beale; I am a resident of the county of Orange, and am seventy-two years of age.

2nd, by same. How far do you reside from the land in reference to which the controversy in this suit has arisen, and how long have you known it?

Answer. I live about two miles from it, and have known it for the last twenty-eight or thirty years. I moved to the place where I now live in eighteen hundred and forty-one.

3d question by same. Has it been worked for gold? If so, by whom, in what manner, and with what success?

Answer. It has been worked for gold by Dr. Grymes and his agents for many years with great success, as I understood while the work was going on. Of course I do not know personally how much gold was obtained. I only know from what I heard and saw at the time that the operations were very successful. These operations were for surface-gold exclusively, upon the portion of the land which is now in controversy; portions of the original tract were sold many years since by Dr.
Grymes, and upon them operations were carried on for vein-gold,
126 but, as I have said, the portion retained by Dr. Grymes, and which is said to have been sold by him to the plaintiffs in this case, was never operated upon for vein-gold, but was operated upon for surface-gold only.

4th question by same. What would you consider the fee-simple value of this land (the 400 acres in controversy in this suit) for agricultural purposes only?

Answer. I should think it was worth from twenty to twenty-five dollars an acre; it has on it all the buildings and improvements and the manured land. I speak of its value as it was in eighteen hundred and sixty-six, when the plaintiffs took possession of it.

5th question by same. What is its condition and value now compared with that in 1866, when the plaintiffs took possession of it?

Answer. I consider that it has been injured in value by from twelve to fifteen hundred dollars since the year eighteen hundred and sixty-six, when they took possession of it. This injury has been caused by the destruction and pulling down of building' on the place, the making of roads in various directions across it, the bad cultivation of the

127 land, it being suffered to grow up in bushes and briars, and being generally neglected.

Cross-examined:

1st question by counsel for plaintiffs. Do you speak of the destruction of buildings, making of roads, &c., as having injured the land to the value of some twelve or fifteen hundred dollars since the plaintiffs took possession in eighteen hundred and sixty-six? Please state, if you know, by whom these acts of destruction were committed, and state further whether you know of the plaintiffs having exercised any acts of possession or ownership since the fall of eighteen hundred and sixty-six, when they notified Dr. Grymes of their intention to abandon the contract.

Answer. I do not know who the buildings were destroyed by, but I know they were there when they took possession, and are not there now. The injury to the land by the cutting of the roads was done by the Vancluse Gold-Mining Company; for I saw their wagons running across the land, and also wagons that they hired. I don't know whether the plaintiffs exercised any acts of possession or ownership since the fall of eighteen hundred and sixty-six or not.

2nd question by same. Was that land during the late war oc-
128 cupied and devastated by either of the contending armies; if so, to what extent?

Answer. It was not occupied by either of the contending armies, but both passed through it and destroyed the fences.

3d question by same. Do you not know the plaintiffs were applied to since eighteen hundred and sixty-six, by Dr. Grymes or his friends, to unite in leasing out, or in some way having that land attended to; and that they declined on the ground that they had no claim to it?

Answer. I know of no such application. I have never heard of Dr. Grymes taking possession of or setting up any claim to the land since his sale to the plaintiffs, and I am sure that I should have heard of it if he had done so, as I know him very well, and live in the immediate neighborhood of the land. And further this deponent sayeth not.

EDWARD BEALE.

Another witness, JNO. R. SPOTSWOOD, on behalf of the defendants, having been first duly sworn, deposes and says in answer to questions as follows:

1st question on behalf of defendant Grymes by counsel. Please state your name, age, and residence.

129 Answer. John R. Spotswood is my name; I am a resident of the county of Orange, and am seventy years of age.

2nd question by same. How far do you reside from the land in reference to which the controversy in this suit has arisen, and how long have you known it?

Answer. I live two miles from the mansion-house, and have known the land all my life.

3d question by same. Has it been worked for gold; if so, by whom, in what manner, and with what success?

Answer. It has been worked for surface-gold, by Dr. Grymes and his agents, for many years and with very great success. The appearance of the land for gold-bearing properties was very much the same with that of those portions of the original farm which was sold by Dr. Grymes, and are now owned by the Liberty Mining Company, (otherwise called the Vancluse,) and by Scott and Slaughter; but it has been worked much more successfully for surface-gold than either of the other portions. It

has never been worked for vein-gold, but from all the indications
130 I believe it is more valuable for that than either of the other portions are. I at one time had a map made by a mining engineer showing the course of the veins of gold through this and the adjoining tracts of land, my own tract included; it showed veins passing through this land (I mean the portion in controversy in this suit) which I know contain gold from explorations on my own land through which the same veins pass, in consequence of which I was enabled to sell a portion of my land as gold-mining property. This map I have not now in my possession, it having been accidentally burnt.

4th question by same. What do you consider the fee simple value of the land (the 400 acres in controversy in this suit) for agricultural purposes only?

Answer. I would estimate the land as being worth, for agricultural purposes only, fifteen dollars an acre, when Dr. Grymes sold it to the plaintiff in the year eighteen hundred and sixty-six, and as worth ten dollars per acre now.

5th question by same. To what is the deterioration in value from eighteen hundred and sixty-six to the present time attributable?

131 Answer. To bad cultivation and the depredations on the timber, injuries to, and the destruction of, buildings; roads made over it, and general neglect and mismanagement. In addition to this there has been various pits which have been cut upon the lands.

Cross-examined by counsel for plaintiffs:

1st question. By whom were the acts of destruction that you speak of committed?

Answer. I know that acts of destruction have taken place, but I cannot name the individuals.

2nd question by same. Who are the present tenants of the land and under what authority do they hold it?

Answer. The two Mr. Adams occupy the mansion-house, garden and a lot attached. Mr. Jennings is also a tenant, and cultivates the land. There are two negro tenants who occupy the cabins. I know not under what authority any of them hold their possession.

3d question by same. Do you know of the plaintiffs' exercising
132 any acts of ownership since the fall of eighteen hundred and sixty-six?

Answer. I do not.

4th question by same. You speak of veins running from this land into and through yours, which enables you to know that there is gold in the veins of this land. Please state whether and by whom these veins after passing into your land have been worked, and with what success, and whether they are the veins which were explored on this land by the witness Bowman.

Answer. I sold to Thomas Hunt, of New York, who worked on two veins of my land with bad success, which was attributable to the defective machinery used by him. He used a Bogardus mill, about the size of a corn-sheller; we used to call it a coffee-mill. He also had two Chillian mills, but they were worked by a second-hand engine originally, as well as I remember, of twenty-horse power, but then worth very little, and he had to abandon his operations because of his defective machinery.

I can't tell whether it is the same vein that Bowman explored on
133 Dr. Grymes' land, but from the directions his cuttings followed fifty or one hundred yards would have crossed the same vein. I do not consider that Bowman's explorations amounted to anything;

he did not continue them deep enough, or far enough across. I consider them a mere commencement of such an examination as ought to have been made.

5th question by same. Has the search for gold on the land you sold Mr. Hunt ever been resumed since his failure? State when his operations ceased.

Answer. It has not been resumed since his failure. Without referring to books, can't tell how long since his operations ceased, but I suppose it has been twenty-one or two years.

6th question by the same. You speak of the pits dug upon the land in controversy as operating one of the injuries to it. What would be the cost of filling the pits said to have been cut then by Mr. Bowman?

Answer. I can't say that the cost of filling up the pits would be much, but the greater injury is caused by the inadequate examination, which would lessen the value of the land in market.

Re-examined by counsel for Dr. Grymes:

134 Question. Have you had any, if any, what, experience in gold-mining?

Answer. I have had experience in looking for surface-deposits on my land and that of others, and have also given a great deal of attention to the mining of vein-gold, which has been extensively carried on in my immediate neighborhod. I consider myself a pretty good judge of the value of gold-mining property, both for surface and vein gold.

And further this deponent sayeth not.

J. R. SPOTSWOOD.

Another witness, V. A. HOUSEWORTH, on behalf of the defendant Grymes, having been first duly sworn, deposes and says, in answer to question, as follows:

1st question by counsel for Dr. Grymes. Please state your name, age, and residence.

Answer. My age is thirty-six; my residence is Orange Co.; and V. H. Houseworth is my name.

2nd question by same. State whether or not you saw Mr. Lanigan, one of the plaintiffs in the suit, at Orange Court-House, after the purchase of the land in controversy in this suit by him and Repplier
135 from defendant Grymes, and whether you had any conversation with him at that time, respecting the property which had been so purchased by him and Repplier. If you had, state what conversation, and what caused you to have it with him.

Answer. I did see Mr. Lanigan, at Mr. Rickett's hotel, at Orange C't-Ho. Having heard that he had purchased Dr. Grymes' land as a gold-mine, I approached him with the view of inquiring whether I could get employment on the place as a gold-miner, having been engaged four years in that occupation in California and Nevada. In the conversation that I had with him, he told me his object in purchasing was to sell the property as mining property, and not to work it himself; that he was not a gold-miner, but engaged in the iron business, in which he said he used one hundred tons of coal a day. He said that he had bought the mine from Dr. Grymes on a speculation. I remarked to him that he had given a pretty good price for it; he replied, I don't know, but I will make my money out of it. He said that he had just come from the land, and that there were two or three persons washing on it for surface-gold, and making twenty dollars a day. I did
136 not understand whether he meant that each of them was mak-

has never been worked for vein-gold, but from all the indications
130 I believe it is more valuable for that than either of the other portions are. I at one time had a map made by a mining engineer showing the course of the veins of gold through this and the adjoining tracts of land, my own tract included; it showed veins passing through this land (I mean the portion in controversy in this suit) which I know contain gold from explorations on my own land through which the same veins pass, in consequence of which I was enabled to sell a portion of my land as gold-mining property. This map I have not now in my possession, it having been accidentally burnt.

4th question by same. What do you consider the fee simple value of the land (the 400 acres in controversy in this suit) for agricultural purposes only?

Answer. I would estimate the land as being worth, for agricultural purposes only, fifteen dollars an acre, when Dr. Grymes sold it to the plaintiff in the year eighteen hundred and sixty-six, and as worth ten dollars per acre now.

5th question by same. To what is the deterioration in value from eighteen hundred and sixty-six to the present time attributable?

131 Answer. To bad cultivation and the depredations on the timber, injuries to, and the destruction of, buildings; roads made over it, and general neglect and mismanagement. In addition to this there has been various pits which have been cut upon the lands.

Cross-examined by counsel for plaintiffs:

1st question. By whom were the acts of destruction that you speak of committed?

Answer. I know that acts of destruction have taken place, but I cannot name the individuals.

2nd question by same. Who are the present tenants of the land and under what authority do they hold it?

Answer. The two Mr. Adams occupy the mansion-house, garden and a lot attached. Mr. Jennings is also a tenant, and cultivates the land. There are two negro tenants who occupy the cabins. I know not under what authority any of them hold their possession.

3d question by same. Do you know of the plaintiffs' exercising
132 any acts of ownership since the fall of eighteen hundred and sixty-six?

Answer. I do not.

4th question by same. You speak of veins running from this land into and through yours, which enables you to know that there is gold in the veins of this land. Please state whether and by whom these veins after passing into your land have been worked, and with what success, and whether they are the veins which were explored on this land by the witness Bowman.

Answer. I sold to Thomas Hunt, of New York, who worked on two veins of my land with bad success, which was attributable to the defective machinery used by him. He used a Bogardus mill, about the size of a corn-sheller; we used to call it a coffee-mill. He also had two Chillian mills, but they were worked by a second-hand engine originally, as well as I remember, of twenty-horse power, but then worth very little, and he had to abandon his operations because of his defective machinery.

I can't tell whether it is the same vein that Bowman explored on
133 Dr. Grymes' land, but from the directions his cuttings followed fifty or one hundred yards would have crossed the same vein. I do not consider that Bowman's explorations amounted to anything;

he did not continue them deep enough, or far enough across. I consider them a mere commencement of such an examination as ought to have been made.

5th question by same. Has the search for gold on the land you sold Mr. Hunt ever been resumed since his failure? State when his operations ceased.

Answer. It has not been resumed since his failure. Without referring to books, can't tell how long since his operations ceased, but I suppose it has been twenty-one or two years.

6th question by the same. You speak of the pits dug upon the land in controversy as operating one of the injuries to it. What would be the cost of filling the pits said to have been cut then by Mr. Bowman?

Answer. I can't say that the cost of filling up the pits would be much, but the greater injury is caused by the inadequate examination, which would lessen the value of the land in market.

Re-examined by counsel for Dr. Grymes:

134 Question. Have you had any, if any, what, experience in gold-mining?

Answer. I have had experience in looking for surface-deposits on my land and that of others, and have also given a great deal of attention to the mining of vein-gold, which has been extensively carried on in my immediate neighborhod. I consider myself a pretty good judge of the value of gold-mining property, both for surface and vein gold.

And further this deponent sayeth not.

J. R. SPOTSWOOD.

Another witness, V. A. HOUSEWORTH, on behalf of the defendant Grymes, having been first duly sworn, deposes and says, in answer to question, as follows:

1st question by counsel for Dr. Grymes. Please state your name, age, and residence.

Answer. My age is thirty-six; my residence is Orange Co.; and V. H. Houseworth is my name.

2nd question by same. State whether or not you saw Mr. Lanigan, one of the plaintiffs in the suit, at Orange Court-House, after the purchase of the land in controversy in this suit by him and Repplier
135 from defendant Grymes, and whether you had any conversation with him at that time, respecting the property which had been so purchased by him and Repplier. If you had, state what conversation, and what caused you to have it with him.

Answer. I did see Mr. Lanigan, at Mr. Rickett's hotel, at Orange C't-Ho. Having heard that he had purchased Dr. Grymes' land as a gold-mine, I approached him with the view of inquiring whether I could get employment on the place as a gold-miner, having been engaged four years in that occupation in California and Nevada. In the conversation that I had with him, he told me his object in purchasing was to sell the property as mining property, and not to work it himself; that he was not a gold-miner, but engaged in the iron business, in which he said he used one hundred tons of coal a day. He said that he had bought the mine from Dr. Grymes on a speculation. I remarked to him that he had given a pretty good price for it; he replied, I don't know, but I will make my money out of it. He said that he had just come from the land, and that there were two or three persons washing on it for surface-gold, and making twenty dollars a day. I did
136 not understand whether he meant that each of them was mak-

ing twenty dollars a day, or that all of them together were making that amount. He seemed to be very much pleased with the purchase of the land, and said he thought he would make money on it. As he told me he was not going to work the mine himself, but had bought it upon speculation merely, I did not apply to him for employment as I had intended to do. This is the substance of the whole conversation I had with him.

3d question by same. Did he say anything about there being or not being a shaft upon the land?

Answer. He did not say anything about a shaft; nothing of the sort was referred to in the conversation between us.

4th question by same. How long was it after he came from the land that you had this conversation with him?

Answer. He came up, I think, in the evening, and the conversation occurred the next morning. It was the day that he purchased
137 two horses here, one from William G. Williams, and the other from Peyton Grymes, jr.

(The second, third, and fourth questions and their answers, as written out above, are excepted to by the plaintiffs' counsel, on the ground that they are an attempt to impeach the evidence of the witness Lanigan, without any proper foundation being laid in said Lanigan's examination for such impeachment, and the plaintiffs' counsel, not waiving said exception, but insisting upon the same, proceeds to cross-examine the witness as follows:)

Cross-examined by the counsel for plaintiff:

1st question by plaintiffs' counsel. What time of year was it, as near as you can place it, when you had the conversation above related with Mr. Lanigan?

Answer. It was in the spring or summer of eighteen hundred and sixty-six, I can't say precisely when; it was in warm weather, I think.

2nd question by same. Had Mr. Lanigan at that time visited the property now in controversy?

138 Answer. He told me he had; that he had just come from it the evening before.

3d question by same. Did you tell him that your object in approaching him was to get employment as a miner?

Answer. I did not. I intended to do so, until he told me he was not a gold but an iron miner, and had bought the property on a speculation.

And further the deponent saith not.

V. A. HOUSEWORTH.

JOSEPH EMBREY, another witness for the defendant, having been first duly sworn, deposes and says in answer to questions, as follows:

1st question by counsel for defendant Grymes. Please state your name, age, and place of residence.

Answer. My name is Joseph Embrey. I am fifty-five years of age, and am a resident of Culpeper Co., Va.

2nd question by same. How far do you reside from the land in controversy in this suit; what is your occupation and how long have you been so employed?

139 Answer. I live about one mile from the land in controversy, being seperated from it by the river which divides Orange and Culpeper Co.'s, and by the Melville mine, which lies on the Orange side of the river. I am a gold-miner, and have been so engaged for about thirty years. I have worked upon various different mines, among which

are the Melville gold-mine, and the Greenwood gold-mine, which adjoin the land in controversy, the former lying on the north and the latter on the south of the land in controversy. I have worked in the Melville mine about fifteen years in all, I and a partner named Hawkins carrying it on on our own account as lessees of the owner, for about seven of the fifteen years. I have worked about four years in all in the Greenwood mine.

2nd question by same. Are you well acquainted with the courses of the veins of gold in the Melville and Greenwood mines; and, if you are, will you say whether they pass through the land in controversy?

Answer. I am well acquainted with them; the Greenwood veins do pass through the land in controversy, and some of the Melville veins do also; but I don't think the one that I worked on there did, but I can't say certainly that it did not.

140 4th question by same. What is the character of the Greenwood veins that pass through the land in controversy; are they worked now, and, if so, with what success?

Answer. They are very rich. They were worked very successfully some twelve or fifteen years ago, and had been for a long while before. A mining company then bought the Greenwood mines, and failed in business very soon after their purchase. The Greenwood mine was not worked again until since the close of the war, when work was commenced on it by Smart and others, some time during the year eighteen hundred and sixty-eight. I recollect that in the operations before the war, a blue water-bucket of ore (containing from three to four gallons) taken from the Greenwood vein yielded twenty-four hundred dollars worth of gold; of course, this was exceptional, being far beyond the ordinary yield, but the vein generally was a good one, but, like all other veins that I ever worked, much richer in some places than others. In the operations of Smart and others, within the last twelve months, a shaft was sunk under my direction as to the place where they should dig, which struck a vein some forty or fifty feet below the surface,

141 the ore from which yielded five hundred dollars to the ton. Operations upon this vein had to be stopped for the want of an engine to pump out the water. This vein was struck this last spring, and the work upon it will be again resumed as soon as the engine which has been ordered arrives.

5th question by same. Do you know whether the land in controversy in this suit has ever been worked for surface-gold? If so, by whom, and with what success?

Answer. It has been worked by Dr. Grymes and his agents for surface-gold successfully. I know that it was done very successfully when Saunders worked it for him.

6th question by same. What is the character of the land in controversy as gold-bearing property?

Answer. It is very good for surface-gold and I think for vein-gold also, but I can't state positively as to the vein-gold, as no vein has as yet ever been worked upon it.

7th question by same. Do you know what explorations for gold

142 were made upon this land in the year 1866, by Maj. Bowman, as the agent of the plaintiffs in this suit? If so, state the character and extent of those explorations.

Answer. I do know of the explorations of Major Bowman, as the agent of the plaintiffs, he having consulted with me at the time he was making them, and I seeing what he did; I showed him where to make the last cut that he made. He made some five or six cuts in all; the

deepest one was not more than twelve or fifteen feet; that was made where I showed him; the others were not more than ten or twelve feet, and I don't think that many of them were as deep as that. At the place I showed him to cut, he struck a vein, but just cut into the top of it; he did not go down through it or across it. From the appearance of the vein, I was very certain that he would find gold-ore if he would cut across it and go deep into it, and I told him so at the time, but he said that they had sent for him to return home, and he couldn't stay longer to make the examination, and went off, leaving the cut as it was, and the exploration to this day has never been renewed. I am still satisfied that whenever a proper examination is made, gold, and a great deal of it, will be found in that vein, for it is the same vein which passes through the Greenwood mine which was struck last spring and
143 yielded $500 to the ton. His examination in other respects, as well as this, were imperfect and insufficient. I don't think he did anything like making a proper exploration for gold. I don't think he had more than three or four hands, and they were not engaged more than eight or ten days at the utmost.

8th question by same. You have stated that ore from the vein recently struck at the Greenwood mine yielded five hundred dollars worth of gold to the ton. What is considered a fair paying yield per ton of ore obtained from that depth, such as will justify one in continuing to work a mine?

Answer. Eight or ten dollars to the ton will pay a profit to any one who will work it properly at that depth, which is, as I have said, forty or fifty feet.

Cross-examined by counsel for plaintiffs:

1st question. What is the distance from the rich shaft that you have spoken of on the Greenwood tract to the land in controversy at the point where you would suppose the vein would enter these lands?

Answer. Between three and four hundred yards to the line, and
144 five or six hundred yards to where Bowman commenced his explorations.

And further this deponent sayeth not.

his
JOSEPH + EMBREY.
mark.

Witness:
W. R. TALIAFERRO, *N. P.*

PEYTON G. HUME, another witness for the defendant, having been first duly sworn, deposes and says in answer to questions as follows:

1st question, by counsel for defendant Grymes. Please state your name, age, residence, and relationship or connection with defendant Dr. Grymes.

Answer. My name is Peyton G. Hume. I am thirty-three years old. Am a resident of Culpeper Co., Va., and am the grandson of Dr. Grymes' wife.

2nd question by same. State whether you were living on the land in controversy in this suit in the year 1866; and, if you were, say how long you lived there, and how you were occupied while there, and by what authority or permission you were so occupied.

Answer. I went to the land in the summer of eighteen hundred and sixty-five, and remained there until the summer of eighteen hundred and sixty-six. I was there by the permission of my grandfather, (Dr. Grymes,)

to wash for surface-gold on my own account. I was without em-
145 ployment after the close of the war, and he told me I might go there and have all I could make in washing for surface-gold. I remained and washed for gold under this permission until Dr. Grymes sold the land to Repplier and Lanigan, and then I remained a short time longer under an arrangement with them. I had left it before Maj. Bowman made his explorations; but when he did so I went back to the land with him, at his request, and assisted him in making them.

3d question by same. Were you at any time agent for Dr. Grymes in reference to this land, or authorized by him to show the lines of the tract, or make any representation respecting the land to persons wishing to purchase or to others?

Answer. I was never at any time agent for him, nor was I at any time authorized by him to show the lines or to make any representations respecting the land to any persons whatever, and I did not know accurately where the lines of the tract were, having only a general knowledge of them.

4th question by same. Were you on the land when R. H. Catlett and Peyton Grymes, jr., came with Fisher to see it in the year 1866? If you were, state whether you had any interview with them, or any
146 of them, while they were on the land, and all that passed at that interview.

Answer. I was engaged in washing on the land for surface-gold when the gentlemen referred to in the question came there, but I was living at the time in a house upon the mining-property adjoining. The gentlemen got there after dark, as I understood. I did not see them that night, but received a message from some of them, (I think it was my uncle, Peyton Grymes, jr.,) to meet them the next morning on the land, and I think that the messenger said that I should meet them near an old abandoned shaft. I went out early in the morning, before breakfast, and met Mr. Catlett and a person whom he introduced to me as Mr. Fisher somewhere in the neighborhood of the shaft. They seemed to be in a great hurry, Fisher saying he would have to get back to Orange C. H. in time to take the train that day. We walked together to the shaft, and Fisher took up several pieces of the old ore and looked at them. Very little was said by anybody, and I don't think we remained at the shaft more than two or three minutes when Fisher and Catlett left and went out on the road to meet the carriage which
147 Peyton Grymes, jr., had there waiting for them. They at once got into the carriage and left the place. This is all, as well as I can recollect, that passed at that interview. I saw nothing of them after they went away in the carriage.

5th question by same. Was anything said by you to Fisher and Catlett, or to either of them, or was anything said by either of them in your hearing, about the lines of the land, or whether the shaft you went to with them was upon it or not?

Answer. Nothing was said by me or by them, or either of them in my hearing, about the lines of the land or about the shafts being upon it. They did not ask me any questions about the shaft or the lines of the land, and if they had done so I could not have given them any certain information, for I did not know whether the shaft was upon the land or not, nor did I know the lines accurately. I know that my grandfather worked on that shaft when I was a boy, and knew also that he had sold off part of the land, but did not know certainly whether the shaft
148 was on the part sold by him or not, though I was under the impression that it was upon the land then owned by my grandfather

which is in controversy in this suit. I have no recollection whatever that one word was said about the shaft while Fisher and Catlett were there, and I know positively that I never did represent that the shaft was upon the land, for if I had spoken about it at all, I would have said that I did not know whether it was upon the land or not, although I was under the impression that it was upon it.

6th question by same. Were you present when the plaintiffs, Repplier and Lanigan, visited the land after it was purchased by them, and was anything, and if anything, what was said about this shaft by them or to them?

Answer. I was still engaged in washing for surface-gold when Repplier and Lanigan came to the land after their purchase. They asked me to show them the lines of the land, and also to take them to the shaft that Fisher and Catlett had been at. I told them that I did not know the lines, but suggested to them that they had best get Mr. Johnson, at whose house they were then staying, to go around them with them. Mr.
Johnson accordingly accompanied us. We went to the shaft,
149 they having expressed to me a desire to see it. When we got
there they asked if that was the shaft that Fisher had seen; I told them that it was. Johnson told them that that shaft was not upon the land which they had bought, but was upon the land that Dr. Grymes had previously sold, and which was then owned by Scott and Slaughter. I stated that I was under the impression, although I did not know it to be a fact, that the shaft was upon the land which they had bought. Johnson said that he knew that it was not. They seemed to be surprised, and after examining a map of the land, which they had with them, and having some private talk together seemed to come to the conclusion that Johnson was right, and that the shaft was not upon the land which they had bought. Very little was said upon the subject after that, if anything, for I do not recollect that it was further alluded to. They then went to the house and examined the dwelling, and probably some of the outhouses; they then went to where I had been surface-washing, and I made some pan-washing for them, showing them the gold obtained by it. We returned then to Mr. Johnson's.

7th question by same. How long did they remain there, and did
150 you see any more of them, before they left the premises? If you
did, state what passed between you and them.

Answer. I am under the impression that they remained there that night and left the next morning; Repplier and his son, and I think another person, who was with them, for Fredricksburg, and Lanigan for Orange Court-House; before leaving, however, Repplier desired to know of me what arrangement he could make with me, by which they could have the property explored. I stated to them in answer, that in consideration of a certain sum to be paid to me by them, I would employ labor, procure the necessary implements, and would make cuts for veins at several or as many points as they might think proper, they in the mean time to advance me the necessary funds to procure provisions, tools, &c., I accounting to them for all expenditures and disbursements, and receiving certain sum for my own services, which, as well as I recollect, were to be two dollars a day. They (Repplier and Lanigan) assented to my proposition, and Repplier called upon Lanigan to
151 know if he had any funds in hand, that they might be left with me,
and finding that he had none that he could spare, Repplier stated to me that upon his return to Philadelphia, he would send me a draft to Fredericksburg. They directed me to get the hands, tools, &c., and go to work at once, and that they would pay all the expenses. I agreed to do so, and they soon afterwards left the place.

8th question by same. Did you proceed to make any explorations under the agreement, and with what result? State all that was done by you and by them under this agreement between you and them.

Answer. I made no explorations, but after the lapse of a few days I went to Fredericksburg expecting there to find the promised draft; remaining there some two days, and the draft not coming to hand, I telegraphed Mr. Repplier, whereupon an answer from Mr. Repplier by telegraph was received by me, stating that they had written to me or would write by that or the next mail. Another day, perhaps, elapsed, and the letter spoken of in the telegraph came to hand, in which Repplier stated that they had abandoned for the time their purpose to make explorations. I think the letter spoke of it as a temporary
152 abandonment of the purpose only, though I am not positive about this. It may have said simply that they had abandoned it. (This letter has been lost, so that I cannot now produce it.) I then made out my bill against them for my services and expenses, amounting in all to seventeen dollars and fifty cent', for which, soon afterwards, Repplier sent me a check enclosed in a letter dated July 26th, eighteen hundred and sixty-six, which I herewith file as a part of this deposition, marked "Letter from Repplier." After receiving this letter and the check enclosed, I left the premises.

9th question by same. How was it that you continued to wash for surface-gold, after the sale by Dr. Grymes to the plaintiffs, until they came to the place at the mine referred to by you, when they were informed by Johnson that the shaft you have mentioned was not on the land?

Answer. Some one, I don't now exactly remember who, though I think it was probably Mr. W'm G. Williams, told me that the plaintiffs desired me to remain and take care of the place until they came, and in consideration of my doing so I might continue the surface-
153 washing I had been engaged in, under the permission of my grandfather.

Adjourned until to-morrow at eight o'clock a. m., at the same place.
W. R. TALIAFERRO, *N. P.*

AUGUST 12TH, 1869.—Examination of witness Peyton G. Hume resumed, same parties being present as on yesterday.

10th question by counsel for defendant Grymes. After you left the premises, in consequence of the letter received from Repplier informing you that he and Lanigan did not desire you to make the explorations they had directed, did you ever return to the place? And if you did, state at whose instance, when, and for what purpose.

Answer. In the latter part of August, 1866, at the instance of Maj. Bowman, as the agent of the plaintiffs, I went back to the premises with the view of assisting him in making explorations for gold, and remained there with him, aiding him in making such explorations as long as he was engaged in them.

11th question by same. Please state the nature, character, and extent of the explorations made by Maj. Bowman.

Answer. The first cuts made by him were, by my suggestion,
154,155 at the graveyard, three in number. I think these several cuts were at intervals of a few feet, so as to leave room for the men to work, one only working in each cut, and were at what I supposed to be at right angles with the general direction of the usual course of the

gold-veins. After such a lapse of time I cannot recollect with positive accuracy as to the depth of these cuts, but I think that no one of them was more than eight or nine feet in depth, some four feet in width, and the longer of the three was not more than twelve or fourteen feet in length, the other two some eight or nine feet in length. At the suggestion of some one, I don't now remember whom, he left this place and went to another one, where we made a cut of some twelve feet in length, four to five feet in breadth, and not more than fifteen feet in depth. In this cut, some twelve feet from the surface, we struck a quartz-vein, and drove down upon it some two or three feet. This vein of quartz gave every evidence of being gold-bearing, but so far as sunk upon it carried no gold. At this point Maj. Bowman determined to abandon the exploration, for what reason I do not know, although I, and Johnson, and Embrey (both of whom were old and experi-
156 enced miners) urged him to go further into the vein, expressing the confident opinion that if he did so he would certainly find gold. Mr. Embrey told him he had never known a vein of that character in that part of the country that did not bear gold, and that it was often necessary to go fifteen or twenty feet or more into the vein before reaching the gold. But in spite of all our suggestions and opinions he abandoned the work at that point, not having gone more than two or three feet into the vein. I was then decidedly of the opinion that if he had gone further into this vein he would have found gold, and I am now confirmed in it by a discovery within the last twelve months of rich deposits of gold in the Greenwood vein, which I am satisfied is the same identical vein that this is. I consider that Maj. Bowman's explorations were not only insufficient, so far as this vein was concerned, but were altogether wholly insufficient in other respects, and amounted to nothing, if he really wanted to ascertain if there was gold upon the place. He was engaged there in all some eight or ten days, and had not more than three or four hands. Any one familiar with such
157 matters knows that no one, except by the merest accident, would with that force, in that time, be able to find out whether the land contained valuable veins of gold or not.

12th question by same. Were any other explorations far gold made by the plaintiffs, or any one for them, upon the land, besides those you have described as having been made by Maj. Bowman, so far as you know or have heard?

Answer. None whatever.

13th question by same. What is the effect upon the market value of the land, as gold-bearing property, of such explorations as those which were made, supposing it to be publicly known that the property had been explored for gold, and no vein bearing gold had been found?

Answer. I think it would seriously affect its value, and interfere most materially with its sale at any future time, if not prevent it entirely as gold-bearing property.

14th question by same. Were you constantly with Maj. Bowman while he was engaged in making the explorations hereinbefore referred to?

158 Answer. I was with him night and day the whole time he was there; we slept in the same room.

15th question by same. Did he say anything about the purpose of the plaintiffs to rescind the contract for the purchase of the land, because the shaft (which you, Fisher, and Catlett were at, when Fisher visited the land) was not upon the land purchased by them, or did he say anything about their disappointment at finding that the shaft was not on their land? If he did, state all he said on the subject.

Answer. He did not say anything about the purpose of the plaintiffs to rescind the contract for the purchase of the land, nor did he give any hint that they contemplated anything of the sort; but, on the contrary, he gave me to understand that, in the event of the plaintiffs working the property, he expected to be sent back as their agent and superintendant. He did not say whether he expected the plaintiffs to work it permanently on their own account, or merely to develope it fully as gold-property, in order to sell it again; but all that he said indicated that he regarded them as permanent owners of the property, without any purpose to rescind the contract. I do not recollect that a word was said by him about the shaft in question; he cer-
159 tainly did not intimate any complaints or dissatisfaction on the part of the plaintiffs, on finding that the shaft was not upon the land.

16th question by same. Were you paid for your services in aiding Maj. Bowman in making the explorations hereinbefore mentioned; and if so, when and by whom?

Answer. Maj. Bowman settled with me by sending a check drawn by the Reppliers, to the amount of my bill, (nineteen dollars and ninety cents, which I think included a small amount of cash advanced him.) I file herewith as part of this deposition, the letter from him to me, in which the check was enclosed, the same bearing date Sept. 7th, 1866, and marked "Letter from Henry Bowman."

17th question by same. Do you know whether the land in controversy has been worked for surface-gold; if so, by whom and with what success?

Answer. It has been worked for surface-gold by my grandfather and his agents as long as I can remember, and as I have always understood with very great succees. As I have stated, I went there by my grandfather's permission in the summer of 1865, to wash for surface-gold on my own account; my washings, however, were
160 confined to old diggings, and to material that had been washed over several times before; so that I was not successful in obtaining much gold, though I more than paid expenses, however. I have gotten from my own washings alone as much as twenty pennyweight of amalgam a day, which was worth about seventy cents a pennyweight in gold.

18th question by same. In what direction do the gold-veins in that part of the country all run?

Answer. They all run northeast and southwest; at least I never heard of any that ran in any other direction.

19th question by same. Will you examine the plat now shown you, headed "Map of Vancluse Farm, Orange County, Virginia, containing 400.70 acres," and having upon it "Staunton, Va., July 8th, 1868." "The map on this sheet is an exact copy of the original in the hands of T. J. Michie, esq., Jed Hotchkiss, C. Eng.;" and also the following words and figures, viz: "This is the map referred to in the receipt to Mess. Repplier and Lanigan, for the first instalment of the purchase-money, dated April 7th, 1866, R. H. Catlett, att'y; w tness, Edward
161 Kenney;" and also the following words and figures, viz: "Made Aug'st 25th, 1865, for Dr. Peyton Grymes, by C. W'm Fry;" and state whether it is a map of the land in controversy, and if it is, whether the three pencil-lines, each of which is marked "gold-vein," correctly represent the direction in which the veins of gold are supposed by those acquainted with the land to run through it; also whether there is

or has ever been any shaft at the place on the land on one of these pencil-lines, which has the word " "shaft," written in pencil.

Answer. The map above described is a map of the land in controversy. The pencil-lines marked gold-veins certainly do not represent the direction in which the gold-veins are supposed to run by those acquainted with the land. They run across them, and not at all in the same direction. These pencilled lines seem to run nearly east & west.

Cross-examined by counsel for the plaintiffs Repplier and Lanigan:

1st question by counsel for the plaintiffs. Mr. Fisher, in his deposition in this case, says that when on the land for the purpose of viewing it, the Dr.'s son, who was one of the parties, said he would go for Mr. Hume, who knew about the property and would show it to us; were you
162 not informed, on that occasion, that the object in calling you was that you might show the property?

Answer. I received a message that night requesting that I would meet Mr. Fisher and Mr. Catlitt at the old shaft. I did not understand that I was expected to show them the property.

2nd question by same. Did you meet them at the shaft? Did you not first show them the place where you had been washing gold, and then lead them to the shaft?

Answer. I met them at a point near the shaft, and that was about where I was surface-washing for gold, & called their attention to the rocker, and Fisher examined it. I then lead them to the shaft, the point that I first met them being some two or three hundred yards from the shaft.

3d question by same. Were you not aware at the time that Messrs. Catlitt and Fisher were there for the purpose of looking at the property in question, and that you were to show it to them; was not such information given to your mind from some quarter?

163 Answer. I concluded that they were there for the purpose of looking at the property. I was not aware that I was expected to show them the lines of the property. I could not have done so, as I was not familiar with the boundaries; the only request that was made of me was to meet them at the shaft?

4th question by same. Was no reason given in the message for what purpose you were desired to meet them, and, when you met, did neither of them give any reason why you had been sent for?

Answer. There was no reason given in the message as to the purpose they had in desireing me to meet them at the shaft. As well as I recollect, neither Fisher or Catlitt gave me any reason why I was sent for.

5th question by same. Did you not know while they were there, that the object of their visit was that Mr. Fisher should be shown the land with a view that he or some principal of his might purchase it?

Answer. I so supposed, but was surprised that he saw so little and asked nothing.

6th question by same. On what ground did you so suppose?

164 Answer. Having heard that the land had been put in the hands of a land-agent for sale, and seeing Fisher there with Catlitt.

7th question by same. Who informed you that the land had been put into the hands of a land-agent for sale, and that Catlitt was the agent?

Answer. I can't say from whom I got my information. I did not hear it from my grandfather (Dr. Grymes) or any reliable source. It was a mere report in the neighborhood. I had not seen my grandfather for seven or eight months or longer.

8th question by same. Being satisfied in y'r own mind that Catlitt

and Fisher were there with a view to a negotiation of a sale, did you not conclude, both of them being strangers to the land, and you having been a resident on the place for some time, that their object in sending for you was that you might show it to them?

Answer. I was simply requested to meet them at this shaft, with what view I don't know. I did not conclude from the circumstance that I was expected to show them the land, and I did not think at all as to the object they had in view.

165 9th question by same. Did they disclose any other object they had in sending for you; and, if not, did you inquire what they wanted with you?

Answer. They disclosed no object that I recollect of, and I certainly did not ask them.

10th question by same. You have said in y'r examination-in-chief that you believed, at that time, the shaft in question stood on the land then owned by y'r grandfather. If you had been interrogated then, would you not have then expressed that opinion?

Answer. I was under the impression that the shaft was upon the land, but I did not really know, and I would have so stated.

11th question by same. Did you not afterwards, on a visit of Mess. Repplier and Lanigan to the land, in the summer of 1866, show that shaft to them, as within the boundary of the land which they had purchased, and did not Mr. Johnson, on that occasion, correct y'r belief, and tell them that it was not within the land they had purchased?

166 Answer. I accompanied Mess. Repplier and Lanigan to the shaft by their request, and when asked if that was the shaft which Fisher had seen, I replied that it was, when Mr. Johnson stated that it was not upon the land which Mess. Repplier and Lanigan had purchased, but was upon the land of Mess. Scott and Slaughter. I stated that I thought it was upon the land that they had purchased, but Johnson insisted that it was not.

12th question by same. Have you any doubt from Mr. Fisher's examination of the ores of that shaft, and from all that transpired at the time that you were there together, that he believed that it was on the land proposed to be sold and constituted a part of it?

Answer. I can't say as to that; he may have been examining the character of the ore in the vicinity of the land. He never told me what he was doing there, and I don't know what information he may have had about the shaft.

13th question by same. You say, in a previous answer, that you led them to the shaft, from a point some hundred yards distant where you had been washing for gold. Why did you lead them there?

167 Answer. A message was sent me to meet them there, and it so happened that I met them some two or three hundred yards distant from it, where I was washing, and from thence we went on to the shaft. I had no other reason that I know of for going with them to the shaft except on account of the message, on the night before, that they wanted to meet me there.

14th question by same. The message was to meet them at the shaft; you met them at a different place; they explained nothing of what they wanted with you; seemed to have no business with you; why then go to the shaft unless they told you what they wanted there?

Answer. The point where I met them was in a direct route from the place that they stayed the night before to the shaft, and I can't say whether I suggested that they should go to the shaft, or whether they suggested it. It has been so long that I don't recollect anything on that point.

15th question by same. Is it not so long that you may well have forgotten many things that was said and done on that occasion?

168 Answer. There were some things which were so thoroughly impressed upon my mind that I could not forget them; there may have been other things which I may have forgotten.

16th question by same. Please state, as nearly as you can, the time in 1866 when Mess. Repplier and Lanigan made their visit to the place.

Answer. I think it was in the early part of July. I think so, because Repplier's letter to me, dated on the 26th day of July, referred to my letter, to him dated on the 21st day of July; and they left a week or longer before my letter was written to them, as well as I remember.

17th question by same. You say in your examination in-chief that the rest of the party except Mr. Lanigan went from the land to Fredericksburg, and Mr. Lanigan came to Orange C. H.; are you not aware that Mr. Lanigan's visit then to Orange C. H. was with a view of seeing Dr. Grymes, and complaining to him that the shaft in question was not upon the land?

Answer. I was not aware that that was the cause of his visit to Orange C. H.; on the contrary, I had every reason to believe

169 otherwise from the fact that I had just received authority from both him and Repplier to go on with the explorations. And again, I had been informed that Mr. Lanigan went to Orange C. H. either to purchase some horses or send North horses that had been purchased for him at or near that place. The horses referred to were purchased from W'm G. Williams and Peyton Grymes, jr., and I am under the impression that Lanigan asked me some questions relatin' to the horse that he had purchased, or expected to purchase, from Peyton Grymes, jr.

18th question by same. Has there been any vein-gold found upon that land since the fall of 1866, or ever before?

Answer. Not that I am aware of.

19th question by same. Are you either a practical or a scientific miner?

Answer. I have had some two or more years' experience with pick, shovel, and pan, working under the eye of several old and experienced miners. And I have studied it somewhat as a science.

170 20th question by same. Who is the owner of the Greenwood mine, and which side does it lie of the land in controversy; and are the two tract' coterminous?

Answer. It has recently changed hands, and I don't know the present owners. I have understood that Smart and others are working it. It lies southwest, adjoining to and coterminous with the land in controversy. I think John M. Herndon had control of it before the recent sale; think he sold it under a deed of trust, and was himself interested in it; and further this deponent sayeth not.

P. G. HUME.

Another witness, PEYTON GRYMES, jr., after first being duly sworn, deposes and says in answer to questions as follows:

1st question by counsel for defendant Grymes. Please state your name, age, residence, and relationship to the defendant Grymes?

Answer. My name is Peyton Grymes, jr.; am forty-seven years of age; am a resident of Orange Co., Va., and son of the defendant Grymes.

171 2d question by same. State whether in the early part of the year 1866 you accompanied Fisher and Catlett to the land in

controversy, and if you did, say at whose instance you went with them.

Answer. I did. I received a letter from Mr. Catlett, who is my brother-in-law, (I having married his sister,) requesting me to meet him and Fisher at Orange C. H. with a vehicle to carry them to the land. I accordingly met them at the depot with a carriage, and took them immediately to the land.

3d question by same. Where were you living at the time, and to what extent were you agent for your father, Dr. Grymes?

Answer. I was at that time living with my father on his farm, near Orange C. H., and managing it for him. I was his agent in all matters connected with the management of the farm upon which he lived, but not further or otherwise. I had authority to sell the crops on the farm where we lived, but not to sell any other property of his, either real or personal, or to exercise any control whatever over it.

4th question by same. Did your father request you to accom-
172 pany Catlett and Fisher to the land in controversy, or authorise you to show it to them, or to make any representations respecting it to them, or to any one else?

Answer. When I received Catlett's letter he knew of it and approved of my going, but did not request me to do so; indeed, he seemed rather indifferent about it. I took my own carriage and mules to carry them to it. My father did not request me to show it to them, or to make any representations respecting it to them or to any other person. I never was at any time authorized to act in any respect as agent for or on behalf of my father in reference to that property.

5th question by same. State when you, Catlett, and Fisher arrived at the land, how long you remained there, whom you saw while there, and all that took place while you were there, as far as you saw and heard.

. Answer. It was, I think, some time in February or March that we went to it, getting there after daylight down; it was beginning to be too dark to see how to drive when we got to the house. We found at the
173 house Mr. Bullard and his wife, (who were then living in it,) a young man by the name of Gordon, who had not long before married Bullard's daughter, and several other persons, male and female. The house was so crowded that it was with difficulty that we could obtain accommodation, but at my solicitation Mr. Bullard managed to lodge us, and we got supper there that night. Before we got to the house I told Catlett and Fisher that I did not know the lines of the land, and proposed to send for a Mr. Johnson, who lived in the neighborhood and was well acquainted with them, that he might point them out. Fisher replied that he did not care to have them pointed out; that he only wanted to take a general look at the land and the character of the country. He said that he must get back to Orange C. H. to make the train going north at twelve or one o'clock the next day. It being twenty-five miles distant, and my mules slow, it was certain that we would have to make a very early start to accomplish it. I therefore did not send for Johnson,
but for Peyton G. Hume, who was nearer than Johnson, and
174 knew, as I supposed, enough about the land to give the general outlines, (for he was then washing for gold upon it,) and requested him to meet them early the next morning at an old abandoned shaft, not more than five or six hundred yards from the house. That night, while we were at Bullard's, there was a good deal of talk (in which I took little or no part) about the value of the land as gold-property. Mr. Bullard, who had been living on it and in the immediate neighborhood of it for several years, spoke very favorably of it, saying that a great deal of gold had been obtained by surface-washing. Neither he or any

one else in my hearing said anything about its ever having been worked for vein-gold, or that there had ever been a shaft sunk upon it. We got up about light the next morning, I going to the stable to feed and gear my mules. Fisher and Catlett about the same time left for the shaft, where I had requested Peyton G. Hume to meet them. The reason that I designated the old shaft as the place for Hume to meet
175 them was because he lived some distance beyond it, and it was an intermediate point, well worked, so that they would not be apt to miss each other and thereby lose time which was precious to us, as Fisher insisted upon getting back for the northern-bound train. I had no idea that in designating that as the place of meeting that it would convey the idea that it was upon the land of my father. For I knew it was not upon the land then belonging to my father, but was on that which had been previously sold by him; and if any question had been asked me about it, or if I had supposed for an instant that they thought it was upon the land then belonging to my father, I would at once have informed them that it was not upon it. As soon as I hitched up I drove out into the road nearly opposite the shaft, and waited until Fisher and Catlett joined me, which they did almost immediately, and we at once started for Orange C. H. I saw Peyton G. Hume with them at a
176 little distance before they reached the carriage, but I do not think that he came up to the carriage or even near enough for me to speak to him. We drove back to the C.-House as rapidly as the mules could be induced to carry us, but did not reach the station until just after the train left. I then took Catlett and Fisher to my father's, within a mile of Orange C. H., where they remained until eleven o'clock that night, and took the night-train which went north at twelve o'clock.

6th question by same. Mr. Fisher, in his deposition which has been given in this case, says that at the time you, Catlett, and he were talking on the road, you spoke to them about a shaft; and again he says that before they left the property you pointed out the supposed line of a quartz-vein running under the house, and which you said you thought was a richer vein than the one upon which the shaft was; and that during the ride to Orange Court-House the shaft he had been to
177 visit was the subject of conversation, and that you said that your father had by the old Chilian process got out of a barrel of quartz taken from the shaft twenty or twenty-four dollars in gold, and that all of his (Fisher's) inquiries were about the shaft, and the yield, and the surrounding rocks. State whether these conversations took place as stated by him, and whether you made the representations and statements which he says you made.

Answer. No such conversations took place, and I made no such representations or statements as those attributed to me by him. I do not recollect that the shaft was mentioned in any conversation between us, on the road or elsewhere, and I know that I never represented that any shaft was on the land then belonging to my father, or said anything from which such inference could be drawn. Nor did I hear any one else speak of the shaft as being upon the land. If I had I would at once have corrected it. I think that something was said about its being supposed that there was a gold-vein which ran under or near to the house. I think it probable that I expressed the opinion
178 that if it was developed, it would be found to be richer than any of the veins which had been opened on any of the adjoining lands. I thought so because it was on the line of some exceedingly rich deposits of surface-gold which had been found on the land. And I am still of the same opinion. I am positive that I never said anything from which

it could be inferred that my father had ever worked the land then owned by him except for surface-gold. I have no doubt that I said he had worked it very successfully for surface-gold, and expressed the opinion that it was good gold-bearing property, and would be found to contain vein-gold also, if properly developed; but I knew it had never been worked for vein-gold, and I never said so, nor did I ever say anything from which such inference could be drawn.

7th question by same. Were you at your father's house while Fisher and Catlett were there; and did you hear any one speak of the shaft in question, or of any shaft whatever as being upon the land then owned by your father; or speak of it as having been ever operated upon except for surface-gold?

Answer. I was at my father's house while they were there, but
179 I went out to attend to my business on the farm soon after we arrived, and was not with them a great deal, but I was frequently in the house during the afternoon and at night, and heard and took part in the conversation which was going on. I did not hear any one speak of a shaft's being upon the land, or of its ever having been worked except for surface-gold, and it never occur'ed to me that Fisher, or any one else, supposed that it had been operated upon at any time for vein-gold.

8th question by the same. Did you see anything of Fisher on that occasion after he left your father's house? If you did, state all that may have passed between you and him.

Answer. I saw nothing of him except on the ride from my father's house to the railroad-station, at Orange C. H. I accompanied him to that place. We went up on horseback; I riding my fine grey stallion, and he riding my father's riding-horse. He seemed to be very much pleased with the horse I was riding; and our whole conversation after we started from my father's house related to him. He said he was just
such a horse as Lanigan wanted, and asked me what I would
180 take for him. I told him I would take 350$, and he said he was cheap at that price, and was sure that Lanigan would give that price for him. I told him he could take him, and he said he or Lanigan would write and let me know. I soon afterwards received a letter from Fisher stating that Lanigan would take him, but he did not send the money, and I heard nothing more from him until Lanigan came up after his visit to the land, some three or four months afterwards, and claimed that he had purchased the horse. Fisher had looked at my horse in the afternoon while he was at my father's, and he could see how he moved that night as we rode to the depot, as it was a very bright moonlight night.

The further taking of depositions adjourned over until to-morrow morning at nine o'clock.

W. R. TALIAFERRO, *N. P.*

AUGUST 13th, 1869.—Examination of the witness, Peyton Grymes, jr., resumed, the same parties being present, at the same place.

9th question by same. When and where did you first see the plaintiff Lanigan? and state what passed between you on that occasion.

181 Answer. I don't think I ever saw Lanigan myself. I received a message from him, I think it was early in July, 1866, sent from Orange C. H., where he then was, that he desired me to send to him the horse which Fisher had bought for him; that he wished to see him. I sent the horse in by my son, and sent him word that I didn't

consider him sold, as they had suffered so long a time to elapse without sending me the money, and he was then making a season. After looking at the horse he sent me word that he considered it as purchased by him, and that he would regard himself as badly treated if I did not let him have him. I was sick at the time, and could not go to see Lanigan myself, but I sent him word that if he considered the horse actually purchased, by what had passed between Fisher and myself, he could take him at the price agreed on, but I would like for him to finish the season. He paid the money for him, but let the horse remain until his season was finished, which was not long afterwards, and then he sent for him and got him along with a horse which he, Lanigan, had purchased from W'm G. Williams, when at Orange C. H., on the occasion referred to.

182 10th question by same. State whether you, Catlett, and Fisher had with you any plot of the land when you went to visit it, and by whom it was furnished.

Answer. We had with us a plot of the land which had been made for my father by C. W'm Fry in 1865. It was sent to us by my father, I suppose, as we passed near his house on our way to the land. My son brought it out to the carriage with a lunch which he brought us to take with us.

11th question by same. Please look at the plat now shown you, which is filed with the deposition of Peyton G. Hume, taken on yesterday, and state whether it appears to be a correct copy of the plat referred to in your last answer.

Answer. It does appear to be a correct copy in its general outlines, but the one we had with us did not have upon it any of the lines marked in pencil as gold-veins, and it did not have upon it anything to
183 indicate that there was a shaft upon any portion of the land owned by my father. With the exception of the pencil-lines, marks, and words upon the plat now shown me, it appears to be a correct copy in all respects of the plat we had with us, but that contained none of the pencil-lines, marks, or words that are upon the one now before me. The land belonging to my father consisted of two separate parcels; one of eighty-two acres, and the other of 318.70 acres, separated from each other by what is marked on the plat as "Smith's land" and "Old Vancluse mine." The shaft about which this controversy has arisen is on the land marked upon the plat as "Smith's land," not far from the line of the 318.70 acres owned by my father; it has been abandoned for many years; I can't say how long.

12th question by same. What is the general direction of the gold-veins in that part of the country; and do the pencil-lines on the plat filed with Hume's deposition, and which has been shown you, represent their course directly?

184 Answer. The veins in that part of the country were northeast and southwest. No one at all acquainted with the subject would ever have drawn the pencil-lines in the plat shewn me as representing the course of the veins upon the land. These lines were across the veins, as they are supposed to lie.

13th question by same. Has your father ever taken possession of, or exercised any control over, the land in controversy since the sale of it to the plaintiffs?

Answer. He has never taken possession of it since that time, or exercised any control over it whatever.

14th question by same. Were there any other offers for the purchase

of the land in controversy as gold-bearing property, or negotiations respecting it, about the same time that it was sold to the plaintiffs?

Answer. Very soon after Mr. Fisher visited the land with Catlett, Mr. Harper, of Alexandria, brought with him an old miner from
185 California, whose name I do not remember, who wished to purchase gold-property, and they visited the place. They expressed themselves as very much pleased with it; and when told that negotiations were pending with a view to its sale, said that if the sale was not affected they would be glad to be informed of it, as they (or rather the man from California, as Harper seemed to be acting rather as a land-agent) were disposed to purchase it. They asked what the property was held at, and on being informed that my father held it at twenty thousand dollars, they seemed to think it a very reasonable price.

15th question by same. Do you know anything of the bargain or arrangement between your father and Catlett for the sale of the land? If so, state all you know about it.

Answer. Catlett was to have all it would bring over twenty thousand dollars. What my father said to him was, "Richard, when-
186 ever you will bring me twenty thousand dollars you can have the property." I don't think there was any writing between them; certainly none until after the sale of the land. I have heard that after the sale had been made my father gave Catlett a power of attorney to collect the money. Catlett's name is Richard H. Catlett.

Cross-examined by counsel for plaintiffs Repplier and Lannigan:

1st question by counsel for plaintiffs. You say in y'r examination-in-chief that you rose about daylight on the morning after you, Catlett, and Fisher arrived at the land in question; that you went to feed and gear the mules, and that at the same time Catlett and Fisher started out to meet with Hume. Did you feed the mules before gearing them up; and what time do you suppose was consumed in feeding and gearing up, and until you called for Catlett and Fisher to come on, that you were ready?

187 Answer. I gave the mules a small feed of corn, and geared them up while they were eating, and I suppose it was about three-quarters of an hour before I got to the place where I called them. I don't think the sun was quite up when they got in the carriage to leave.

2nd question by same. During that time Fisher, Catlett, and Hume, I presume, were examining the land?

Answer. They had to go some five or six hundred yards across my father's land until they got to Scott and Slaughter's line, across which was the shaft, not far from my father's line, some sixty yards perhaps. I suppose they were examining the land as they walked along. They did not return over the land, but in coming to the carriage they came over the land of Scott and Slaughter.

3rd question. What portion of that time did they spend at the shaft in question?

Answer. I was not in view of them, and don't know how long
188 they stayed at the shaft, or how much time they consumed at other places. They were not at the shaft when I saw them, but at some distance from it, on Scott and Slaughter's land, and seemed to be looking at other shafts upon it, for there were several on that land.

4th question by same. At some time subsequent to leaving the land on that occasion, or perhaps subsequent to the discovery that the shaft was not upon the land, did you not say to Howell Fisher, or R. H. Catlett, or to both of them, that if you had shewn the land on that occasion

you would have pointed out the shaft now in question as being upon your father's land?

Answer. No, I never said anything of the sort to either of them at any time. I don't recollect that I ever had any conversation with either of them about this particular shaft. I do recollect that
189 when on our way to the land I told them that I was not familiar with the lines of the land, and preferred not pointing them out.

5th question by same. You say in y'r examination-in-chief that you knew this shaft was not upon the land intended to be sold. In what way had you become acquainted with that fact?

Answer. I knew that my father had sold all the land that he had ever worked for vein-gold, and I think it probable that I saw the parties to whom he sold the land upon which the shaft was, at work upon it or near to it. I am not sure that I saw them at work upon it, for it caved in and was entirely abandoned soon after my father sold it.

6th question by same. When you say that you are not familiar with the lines, do you mean that you were unacquainted with the lines in the neighborhood of that shaft as well as elsewhere on the land?

190 Answer. I did not know the exact lines near the shaft. I knew where the line was there better than on most other parts from its proximity to an old mill-dam, though I could not have pointed it out with accuracy. The only line on the land that I did know with accuracy was the dividing-line between the land and the Greenwood property. It is separated from Greenwood by the Wilderness Run, which is on the southeast side. I suppose this run, as represented on the plat already referred to, is marked C D.

7th question by same. Please relate, if you can, any conversation in reference to the land in question which occurred among you on y'r way from the land to Orange C. H., on that occasion or at y'r father's while Mr. Fisher remained there.

Answer. I was the driver, and was making every effort to get
191 Mr. Fisher to the train; I recollect no particular conversation that occurred on our way back; the conversation was general; I may have said something to Mr. Fisher about the surface-washing upon the land, and think that I did tell him of a very rich deposit of surface-gold, that was found near the house, and which led some to believe that the vein which I supposed would be found passing under or near to the house if proper explorations were made, would be found to be richer than any of those that had been opened on the adjoining land. There was a great deal of general conversation about the value of the land as gold-property, and what had been made by working for vein-gold on the lands in the neighborhood of it. All that was said about the land related to surface-gold only so far as it had ever been worked. Of course I cannot recollect everything that was said on our way back, or at my father's house, but this was the general purport of the conversation, both on our way back and at the house, so far as
192 I took part in or heard them. I did not hear a great deal of what was said at the house, as I was not constantly present with them; as I have said, however, I was frequently in and out of the house while they were there.

8th question by same. Who sunk and worked the shaft about which so much has been said, as long as it was worked?

Answer. It was sunk and worked by my father and agents until it was sold, and I don't think it was ever worked much longer, although it may have been worked for some time after it was sold.

9th question by same. Is it not a fact well known in the family, and

spoken of by them, that some very rich ores were obtained from that shaft while it was working, yielding the large quantity of gold spoken of in Mr. Fisher's deposition?

Answer. It is a fact that rich ore has been taken from that
193 shaft, and I suppose it was known in the family, but I do not know that it was by any means a general subject of conversation. I do not know that the yield from any particular quantity of ore taken from it was ever particularly mentioned or ascertained. I do know that I never told Fisher what he says I did about it, and I never heard any one else tell him so.

10th question by same. Do you not know or believe that as much as twenty or twenty-four dollars of gold was at some time obtained from one barrel of the ore taken from that shaft?

Answer. I don't know it, but think it very probable that that amount, if not more, has been obtained from that quantity of ore taken from that shaft. I know that they struck at one time a very rich narrow vein while they were working it, and as much, and even more than this had, as I had heard and believed, been obtained from shafts on the adjoining property, particularly the Greenwood property.

194 11th question by same. When you sent for Mr. Hume to meet Mess. Fisher and Catlett at the shaft, as stated above, or on his arrival to it, did you not indicate to him the purpose of his being sent for?

Answer. The message I sent him was to meet them at the shafts. I did not say particularly which one, and did not have in my mind this particular one any more than others, for there were two or three of them near each other, all of which were in the way that he would have to come on his way to the house where we stayed that night. The message was sent to him by a small boy, and I think I told him to tell Mr. Hume that I wanted him to come to the shafts as early as he could in the morning, to meet Mr. Catlett and Mr. Fisher, and shew them the land. I did not myself see Mr. Hume that night, and I did not see him the next morning except at a distance, and I do not think I spoke to him at all.

And further this deponent saith not.

PEYTON GRYMES, JR.

195 Another witness for the defendant Grymes, viz, W'M G. WILLIAMS, having been first duly sworn, deposes and says, in answer to questions, as follows:

1st question by counsel for defendant Grymes. Please state your name, age, residence, and occupation.

Answer. William G. Williams is my name; I am thirty-nine years of age, and am a resident of the county of Orange, living at the C. Ho., and engaged in the practice of law.

2nd question by same. Do you know anything of the sale by the defendant Grymes to the plaintiffs of the land in controversy in this suit, or of the negotiations that led to it? If you do, please state all you know on the subject.

Answer. I first heard of negotiations for the sale when Catlett and Fisher returned from their visit to the land in Feb., 1866, I think it was; upon their failure to reach the cars in time, Catlett sent me a message to meet them at Dr. Grymes' house, where they were going.

I went there, and was with them most of that evening and until
196 9 or 10 o'clock that night. Whilst there, there was a good deal of conversation between Catlett, Fisher, Dr. Grymes, myself, and

others (among whom was William Bailey, who is now dead) about the amount of gold that Dr. Grymes had gotten from the property that he was then proposing to sell, as well as the property which he had originally owned and had sold previously to others, and also what those who had purchased portions of the property from him had obtained from the land bought by them. I recollect particularly that a good deal was said about what had been obtained by Smith in the mine which he worked, which, I think, was the Vancluse mine. Dr. Grymes spoke of what he had obtained by his own surface-washings. I do not recollect how much he said he had made, but the amount was very large considering the manner which he said he had worked, his washings having been done chiefly with his own farm-hands at spare times. He did not state that he had ever worked for vein-gold on the land then
197 owned by him, or that there was a shaft upon it, and I heard nothing which led me to believe that there was a shaft upon it, or that it had ever been worked for vein-gold. I recollect that in the conversation the opinion was expressed by Dr. Grymes (and possibly by others also) that if a proper examination was made it would be found that the vein from the Greenwood mine (which was on the land immediately adjoining, and was very rich) would be found to pass under or very near to the dwelling-house, and gave as one of the reasons of his opinion that in sinking a grave near the house very strong indications of a gold-vein had appeared, and that it was exactly in the line of the Greenwood vein. This was the general tenor of the conversations at Dr. Grymes' house, as far as I can recollect. I remember that the Dr. stated that the amount of gold which he had made could be ascertained by reference to the bank at Fredericksburg, where he made his
198 deposits, and that specimens of the ore which had been obtained from the veins which had been worked at the Vancluse mine, and on other portions of the property which had been owned by him originally might be seen either in Philadelphia or at the Patent-Office in Washington, I am not sure which. Fisher left that night on the train going northward. I think it is proper for me to state that by an arrangement which had been previously made between myself and Catlett, (who is my uncle,) I was to share a portion of the commissions which he (or rather the firm of Echols, Bell and Catlett, of which he was a member) might make on any land-sales effected in the county of Orange, and I did receive a portion of what was made by Catlett on the sale from the defendant to the plaintiffs in the case. The fact that I was interested with Catlett in his land-sales in Orange caused him, as I supposed, to send for me to meet him and Fisher at Dr. Grymes.
199 The next I heard of the matter of the sale was when Fisher, not long after his visit to the land, returned, bringing with him a letter from Repplier to me, requesting me to aid him in examining the records and investigating the title to the land. I had no acquaintance with Repplier, and have no reason to believe that he ever heard of me except through Catlett, who, as I suppose, informed him that I would give such aid. I examined the records together with Fisher, and we found that after deducting the quantity of land previously sold by Dr. Grymes from that mentioned as the size of the tract in the devise under which he held it, there seemed to be much less than 400 acres remaining, the will describing the land as containing about 600 acres & about 400 acres having been previously sold in separate parcels by Dr. Grimes. We applied to Dr. Grimes for an explanation, and he informed us that the description of the land in the will of his mother under which he held it as containing "about 600 acres," was erroneous, and that upon a survey

made soon after the death of his mother, it had been found to con-
200 tain about 800 acres. This corresponded with the survey which had been made for him in 1865 by C. W'm Fry of the portion of the land then owned by him, and Fisher was satisfied that he was right in his statement as to the quantity of the land, and we found the title clear. About that time, or soon afterwards, I prepared the deed to the property, which was executed by Dr. Grymes to the plaintiffs, the sale having been effected. I had before me when I prepared this deed the plat of the land which was made for Dr. Grymes by C. W'm Fry in the year 1865.

3d question by same. Will you examine the plat now shown you and which is filed with the deposition of Peyton G. Hume, taken in this case, and say whether it appears to be a true copy of the plat made by Mr. Fry for Dr. Grymes, which you had before you when you drew the deed, and if it differs in any respects please state in what particulars it does differ.

201 Answer. The general outline of this map appears to be an exact copy of the one I had before me when I drew the deed. The only difference that I perceive is that this copy has upon it certain lines, words, and figures, written with a pencil, which were not upon the original map when I drew the deed; and I think that a yellow line, under the words "old Vancluse mine," and passing over the letter I, was not upon the original map at that time. The map which was before me when I drew the deed did not contain any of the lines in pencil marked "gold-vein;" nor did it contain any mark of a shaft upon the 318.70 acre parcel of the land, or any other of the figures, words, or marks that appear in pencil on the copy now before me. The only thing on the map before me when I drew the deed in which the word "gold" was used were the words "branch containing gold," which are also upon the copy now before me.

4th question by same. When did you next see the map (or plat
202 or a copy of it) which was before you when you drew the deed, and in whose possession?

Answer. I think it was in the latter part of August, 1866, that I saw the map, or a copy of it, in the possession of Maj. Bowman, who came here as agent for the plaintiffs, to make explorations upon the land, to see if it contained veins of gold. Bowman came to me with a letter from Repplier, requesting me to give him any assistance I could in the business upon which he was engaged. The map, as there shown me by Bowman, had upon it the pencil-lines marked "veins of gold," and also the word "shaft" as they appear upon the copy now before me. I do not recollect whether the yellow line under the words "old Vancluse mine" was upon it or not. With the map Bowman had a written description of the property as gold-property. I told Bowman that the lines in pencil upon the map written "veins of gold" were incor-
203 rect; that the gold-veins in that neighborhood ran, as I was confident, in an entirely different direction, and Dr. H. D. Taliaferro, who was well acquainted with the land, told him the same thing. I did not read all of the description of the land which he had with the map, but I read enough of it to see that it appeared to be a very extravigant and high-flown one, puffing the property greatly. The reason I didn't read it all was that Bowman did not offer to let me read it, and, indeed, I thought was unwilling to do so when I was looking at it with the map to which it was attached.

5th question by same. Did Bowman say anything about his having, or expecting to have, an interest in the property in question?

Answer. Bowman told me he expected to have an interest in it.

6th question by same. Did Bowman on that occasion say anything about the shaft's (which Fisher and Catlett had seen) not being on the land? If so, state all that he said on that subject, either then or at any other time, in your hearing; and state also whether you were present at the interview between him and the defendant Grymes.

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Answer. I was present at the interview between him and Dr. Grymes. They had only one, which was at Dr. H. D. Taliaferro's house. I carried Bowman there to see Dr. Grymes, Bowman having expressed the wish to see him. The only persons present at the interview were Dr. Grymes, Bowman, and myself. Bowman stated to Dr. Grymes that the shaft which was represented to Fisher as being on the land had been ascertained not to be upon it. Dr. Grymes instantly replied that there was no shaft on the land that he had sold to Repplier and Lanigan, and that he had never represented to any one that there was a shaft upon the land, and that he had never authorized any one to make any such representation, nor did he know, or have reason to believe, that any such representations had in fact been made by any one. Bowman insisted that such representation had been made, and that Repplier and Lanigan thought the shaft was on the land when they brought it. The Dr. repeated that he had never made such representations, and had never authorized any person to make them. I think Bowman then went on to say that some deduction should be made because the shaft was not on the land, and that Dr. Grymes refused to agree to make any; but I am not perfectly sure that Bowman said anything to him about making a deduction of the price of the land. He did say so to me after the interview was over and as soon as he got back to my office, and actually entered into some calculations to see how much gold-vein was lost. I gave him no reason to hope that Dr. Grymes would make a deduction, and think I told him that I was sure he would not. Before we went to see Dr. Grymes, Bowman told me that the object of his visit was to see him about this shaft. That evening I carried Bowman out to Peyton Grymes, jr.'s, where Catlett was, and the shaft was again the subject of conversation, and I think that Bowman again said that a deduction ought to be made for it; but I did not hear all of the conversation between Bowman and Catlett. Bowman returned from Peyton Grymes, jr.'s, to Orange C. H. that evening, and the next day went to the land in controversy to make explorations for vein-gold. He asked me to recommend to him persons to assist him in making the explorations. I recommended Peyton G. Hume, and a man by the name of Johnson, an old miner, who lived near the property. He went to the land the next day, accompanied by Hume, whom he engaged to assist him in making the explorations. I did not hear Bowman say anything about the shaft which Fisher and Catlett had seen, except what I have stated above, on that or any other occasion. In fact, I never saw Bowman except at that time.

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7th question by same. Bowman, in his deposition, which has been given in this case, states that he called upon Dr. Grymes at his house, and during their conversation informed him that from a reliable source they had ascertained that the shaft represented as being on the tract of land sold to Messrs. Repplier and Lanigan was not on the tract, but on an adjoining one, and that his impressions are that the doctor said to him then, that he had supposed that the shaft in question was on the tract of land sold to Mess. Repplier and Lanigan. That he then informed him (Dr. Grymes) that he (Bowman) was going down to the tract to

explore for veins said to exist there, and if without success, they (meaning the plaintiffs, or himself, or perhaps the plaintiffs only) would decline making the second payment of $12,500, and demand a return of the payment already made of a like sum, with the interest thereon.

208 He says further, under cross-examination, that he formed the impression that Dr. Grymes thought the shaft in question was on the land he sold Repplier and Lanigan, from the fact that he (Dr. Grymes) said he supposed it was upon it, and that his recollection was, at the time he gave his deposition, distinct, that Dr. Grymes did say so. He says further, that his impression is that it was Williams, an attorney at law at Orange Court-House, through whom he had access to the records of the county, who was present at this conversation between him and Dr. Grymes, and that he did not recollect of any one else being present. Will you state whether there was any other Williams at Orange Court-House through whom Bowman had access to the records than yourself; whether Bowman saw Dr. Grymes at all at his own house on the occasion of this visit of his (Bowman's) to Orange Court-House, and whether, in the conversation he had with Dr. Grymes,

209 in your presence, he said anything whatever about the intention of the parties to refuse to make the second payment of $12,500, and to demand a return of the first payment, with interest, if the explorations he was about to make for veins on the land should prove unsuccessful, or anything of the sort; or did you hear him, at any time or to any person, say that there was any purpose on the part of the plaintiffs to rescind the contract for the purchase of the land, in any contingency whatever?

Answer. There was no other Williams here than myself through whom Bowman had access to the records at Orange C. H., nor was there any other att'y at law at Orange C. H. named Williams, except my father, Lewis B. Williams, and I know that Bowman did not have any conversation with my father while he was here. I don't think he saw him at all. Bowman, immediately on his arrival, came from the depot to my office, and I was with him all the time he was here except at

210 night. He could not have seen my father at night, for my father and I were both at my father's house that night, some two miles distant from Orange C. H., where Bowman stayed. I know that Bowman did not go to Dr. Grymes' house, or have any other interview with him than the one that I have mentioned, which took place at Dr. Taliaferro's, in the village of Orange C. H. I have already stated the substance of the conversation which took place between them. I know positively that nothing was said about the plaintiffs' intention, in any contingency whatever, to decline to make the second payment for the land, or demand a return of the payment which had been already made by them. Bowman said nothing there nor at any other time, in my presence, from which it could be inferred that the plaintiffs entertained any purpose whatever to rescind the contract of purchase. In referring to the shaft not being upon the land, he seemed to have no other object whatever in view but to obtain some abatement from the price of the land, and he went down to make the explorations without having

211 succeeded in doing so. I know, too, that Dr. Grymes did not say to Bowman that he supposed the shaft in question was upon the land; he said the contrary, very distinctly, and more than once. I never heard anything about any purpose on the part of the plaintiffs to rescind the contract, or had any suspicion that such a thing was contemplated by them until after Bowman had made his explorations on the land, and returned to the North. I then was told by Catlett that

the plaintiffs talked of rescinding the contract, upon the ground that the shaft was not upon the land.

8th question by same. In giving aid to Fisher and Bowman in this matter, were you acting as the attorney of the plaintiffs in this suit or because of your being interested with Catlett in the sale of the land?

212 Answer. I was not acting as an att'y for the plaintiffs, but rendered the service which I did because I was interested with Catlett in the sale of the land. The plaintiffs did not pay or offer to pay me any fee, and I never thought of charging them any.

9th question by same. What portion of the purchase-money did Catlett receive, or was to receive, and what portion was received, or to be received, by Dr. Grymes?

Answer. Catlett was to receive all he could get for the property over twenty thousand dollars, and Dr. Grymes also promised that he would let him have 5 per c't. on the $20,000 in addition, if he effected the sale. When the plaintiffs made the payment of $12,500, Catlett retained $2,500 for himself and those interested with him, and paid Dr. Grymes $10,000. Dr. Grymes offered to pay him the 5 per ct. commission on the $10,000, but Catlett declined to receive it.

213 10th question by same. State whether you ever had any interview with Lanigan, one of the plaintiffs in this suit, and if you did, state when and where, and what passed between you.

Answer. Some time early in July, I think, 1866, the plaintiff Lanigan came to my father's house, where I was then residing. He was in a vehicle driven by a young man named Saunders, who lived near the land in controversy. Lanigan told me that he and Repplier and others had just been to visit the land; that Repplier and the other members of his party had gone back to the North by the way of Fredericksburg, and that he (Lanigan) was returning by the way of Orange C. H. in order that he might look at a horse which Fisher had told him I had, and one that Peyton Grymes, jr., had, on his way from the land in controversy when he came by my father's house to Orange C. H. He told me he was going to Orange C. H. that night, and I found him there the next morning. He looked at my horse that evening, and told

214 me to bring him up to Orange C. H. next morning. I did so, and found him there with a horse of Peyton Grymes, jr., which he had purchased, or was about to purchase. He compared the horses together to see how they would match, and told me he thought he would take my horse at the price I had asked for him. He shortly afterwards sent two young men after both horses, sending me the money for mine. They got the horses, and started for Pennsylvania on them.

11th question by same. Did you have on that occasion any conversation with Lanigan about the purchase by him and Repplier of the land in controversy in this suit? Did he say anything about having heard that the shaft (about which this controversy has arisen) was not upon the land? State any and everything he may have said in reference to the land that would indicate whether he was satisfied or dissatisfied with the purchase?

215 Answer. There was nothing said about the purchase of the land, that having been made some months previously; but we did converse with each other about the land that had been purchased by him and Repplier. I cannot recollect all that was said in those conversations, but I do know that nothing was said about the shaft, and that he said nothing to produce the impression that he was dissatisfied or disappointed in any respect with the property after the examination that he had made of it.

12th question by same. Do you know whether he saw the defendant Grymes while he was at Orange Court-House, or at your father's, or did he express any wish to see him?

Answer. I don't know that he saw him. I don't recollect that he made any enquiry for him, or expressed any wish to see him.

216 13th question by same. Do you know whether the defendant Grymes was at that time sick, or for any cause unable to see any person who desired to see him on business?

Answer. I did not know or hear anything about his being sick at that time as well as I can recollect, and I think I would have heard of it, as I passed by his house every day on my way from my father's, (where I was then living,) to Orange C. H., and was intimately acquainted with him and his family.

14th question by same. Did you meet with Lanigan at Orange Court-House at any time after this visit of which you have spoken; if so, when? and state whether you were present at any interview between him and the defendant Grymes, or between him and Catlett, and what passed at such interview in reference to the subject of this controversy.

Answer. I did see Lanigan at Orange C. H. a month or more
217 after Bowman had been on to make his explorations. I was not present at any interview between Lanigan and the defendant Grymes. I did see Lanigan and Catlett together whilst he was here, and understood from them than Lanigan's object in coming was to demand a re'cission of the contract for the sale of the land. I do not recollect particularly anything that passed between them further than this; had no special conversation myself with Lanigan upon the subject.

15th question by same. You have stated in your answer to one of my questions that you carried Bowman out with you to Peyton Grymes, jr.'s, where Catlett then was. Where did Peyton Grymes, jr., then live; was he living at his father's, or not?

Answer. Peyton Grymes, jr., was then living at Woodley, a farm he had rented, about four miles from Orange C't-House, in a different direction from the place at which his father lived; he had left his
218 father's and gone to the place where he then lived, late in the spring of that year, (1866,) the last of April, or the first of May, I think.

16th question by same. Did you have opportunities to know whether there was much demand for the purchase of mining property in this part of the country in the winter and spring of 1866? if so, state whether there was a disposition then on the part of northern parties to buy such property, and how long that state of things continued.

Answer. I was engaged in the land-agency business with Echols, Bell, and Catlett, and in that way had a good opportunity of knowing what demand there was for mining and other real property in this section of Virginia. There was, in the winter and spring of 1866, very considerable enquiry for mining and mineral properties of all kinds by
219 northern capitalists, and although I did not know of many sales in this immediate neighborhood, I did of several sales in Virginia at high prices. This state of things continued until the summer, or early fall of that year, since which time there has been little or no enquiry for property of that kind, and I have heard of but few sales.

Adjourned until to-morrow morning at nine o'clock.

W. R. TALIAFERRO, *N. P.*

AUG'ST 14TH, 1869.—Examination of witness W'm G. Williams resumed, the same parties being present at the same place.

Cross-examined by counsel for plaintiffs Repplier and Lanigan:

1st question by counsel for plaintiffs. Were you so situated at the time that you speak of on page 79, line 13 of your deposition that you heard and can now remember everything that then passed between Dr. Grymes, Mr. Fisher, and Mr. Catlett, or do you only mean to say
220 that you did not hear or do not recollect any statement of Dr. Grymes that he had ever worked for vein-gold on the land then owned by him, or that there was a shaft upon it?

Answer. I was at Dr Grymes' with them from dinner-time until bed-time, but I can't say that I was present with them all the time. The wife of Peyton Grymes, jr., is my aunt, and was then living there, and I think it probable that I may have gone out into the house in the yard, where she was living, to see her while I was there, though I do not now recollect that I did. I am certain that I was with Fisher and Catlett and Dr. Grymes most of the time. I do not suppose that I do recollect accurately everything that passed while I was with them, but I do know that Dr. Grymes did not state in my hearing that he had ever worked for vein-gold on the land then owned by him, or that there was any shaft upon it.

221 2d question by same. In your deposition on page 84, you speak of a paper attached to a map that Bowman then showed you, and say that it contained very extravigant and high-flown puffing of the property; that the reason that you did not read it all was that Bowman didn't offer to let you read it, and you thought was unwilling to do so; did he not give it to you along with the map to which it was attached; had you not both in your hands together? If so, please state what evidence he shewed of unwillingness for you to read it.

Ans'r. When Bowman had the map at my office I did not have it in my hands. He had it on the table; the map was attached to the description of the property, and, as laid on my office-table, was on top. Bowman was there pointing out the gold-veins to me, and it was then that I said to him that the gold-veins did not run in the direction as laid down on the map. We then went to the drug-store of Dr.
222 H. D. Taliaferro, who, I had informed Bowman, knew accurately as to the direction in which the veins ran. Whilst at Taliaferro's drug-store the map and description of the property was laid by Bowman on the counter, and whilst Bowman was talking to Dr. Taliaferro I took it up and was reading the description. Bowman soon wanted it, and from his manner of taking it and folding it up I was impressed with the idea that he did not wish it seen, and, of course, made no further effort to read it. I recollect that I soon after remarked to Dr. Taliaferro that so far as I had seen the description it was extravagant, and that from Bowman's manner I felt sure he did not wish me to read it.

3d question by same. From what you read of that attached paper, may it not have been merely a memorandum for Bowman's guidance in the explanation of the property containing such description of the gold-veins, &c., as the purchasers thought would enable him to exam-
223 ine them, and as they had derived from the agent of Dr. Grymes, (Mr. Catlett,) and their own agent, Fisher?

Answer. The attached paper seemed to be very voluminous—at least there was a good deal of paper. I cannot say that the whole was written on, or that the whole was a description of the property, but I do not think that it could have been "merely a memorandum for Bowman's guid.

ance in the exploration of the property, containing such description of the gold-veins, &c., as the purchasers thought would enable him to examine them." I recollect distinctly that it spoke of it as the most valuable gold-property on the Atlantic slope, or words to that effect. I cannot say that they had not derived the description from Dr. Grymes' agent (Catlett) and their own agent, Fisher; I know nothing about that. The paper seemed to me to be a puff of the property.

4th question by same. You say on page 93 in y'r deposition, that Mr. Lanigan called at y'r father's on a certain occasion early
224 in July. Do you know that he had then visited the land?

Answer. Lanigan then told me that he had just come from the land, where he had just been with Repplier and others, who he said had returned home by way of Fredericksburg; and further this deponent sayeth not.

W'M G. WILLIAMS.

The foregoing depositions of Edward R. Johnson, Edward Beall, John R. Spottswood, V. A. Houseworth, Joseph Embry, Peyton G. Hume, Peyton Grymes, jr., and William G. Williams, were duly taken, sworn to, and subscribed before the undersigned, W'm R. Taliaferro, a notary public for the county of Orange, State of Va., in the counting-room of the drug-store of H. D. Taliaferro, at Orange C't-House, Va., on the 10th, 11th, 12th, 13th, and 14th days of August, A. D. 1869, as stated in the caption and adjourning orders, s'd depositions being taken by Peyton Grymes, to be used as evidence in his behalf in a chan-
225 cery suit pending in the circuit court of the United States of the district of Va., in which George S. Repplier and James Lanigan, citizens of the State of Pennsylvania, are plaintiffs, and s'd Peyton Grymes, who is a citizen of the State of Va., is a defendant; s'd depositions being taken in the presence of William J. Robertson, counsel for the defendant Grimes, and of Thomas J. Michie, counsel for the plaintiffs, Repplier and Lanigan; and the s'd plaintiffs by their s'd counsel consenting to the taking of the same; the answers to the questions propounded to the witnesses respectively being written down by myself in the presence of the witnesses and of the counsel on both sides, with the exception of the answers to some of the questions propounded to the witness W'm G. Williams, which answers were written down by the witness Williams, in my presence, and the presence of the counsel on both sides, they consenting to the mode in which all of said
226 depositions have been taken, closed, and certified, and to their being used in evidence in said case of Repplier and Lanigan vs. Grymes, now pending in the circuit court of the United States for the district of Va., holden at Richmond, Va. Given under my hand and notarial seal this 14th day of August, 1869.

[SEAL.] W. R. TALIAFERRO, *N. P.*

Notary's fee for taking the foregoing depositions, (engaged forty hours, at seventy-five cents per hour,) $30, charged to defendant Grymes.

W. R. TALIAFERRO, *N. P.*

227 *Letter from Repplier.*

PHILADELPHIA, *July 26th*, 1866.

P. G. HUME, Esq.,
Orange Co.-House, Orange Co., Va.:

DEAR SIR: Your favor of 21st inst. is at hand, enclosing bill for ser-

vices and expense in behalf Vancluse property. Herewith please find check enclosed for $17.50 in full for same.

Truly y'rs, &c.,

GEO. S. REPPLIER,
Per MILLER.

(Endorsed:) Filed with deposition of Peyton G. Hume.

Letter from Henry Bowman.

[Office of J. G. & G. S. Repplier, No. 329 Walnut st., Philadelphia; pier 13, Port Richmond.

PHILADELPHIA, *Sept. 7th*, 1866.

Mr. P. G. HUME,
Orange Court House, Va.:

228 DEAR SIR: Enclosed please find check for the sum of nineteen & $\frac{90}{100}$ dollars, being am't due you. I will thank you to acknowledge the receipt of the same.

Respectfully, y'r ob't serv't,

HENRY BOWMAN.

(Endorsed:) Filed with the deposition of Peyton G. Hume.

229 In the circuit court of the United States for the district of Virginia, holden at Richmond.

The deposition of witnesses, taken by consent of parties, by their counsel, at the law-office of Messrs. Echols, Bell & Catlett, in the town of Staunton, on Thursday, the 3d day of February, 1870, Friday, the 4th day of February, 1870, and Saturday, the 5th of February, 1870, to be read as evidence on behalf of the plaintiffs in this suit upon the trial of this cause.

Present, Thomas J. Michie, counsel for plaintiffs; William J. Robertson, def't.

JAMES LANAGAN, one of the plaintiffs in this suit, a witness of lawful age, introduced by the pl't'ffs, being duly first duly sworn upon the Holy Evangelists of Almighty God, deposes and says:

1st question by pl't'ffs' counsel. In your original deposition taken in this case, you say that immediately after you had first seen the property in controversy here, you called upon Doctor Grymes, but was told he was sick. Will you please state the circumstances of
230 that call, who informed you that Dr. Grymes was sick, & whether you were informed that he was too sick to receive your visit, and what the object of your visit was?

Answer. A young lady, said to be the daughter of Dr. Grymes, told me he was sick. I supposed her to be the daughter. She said father was sick and could not be seen. The object of my visit was to inform Dr. Grymes that the shaft was not on the land purchased; or, in other words, were not getting the property we supposed we were; that is, the property we purchased.

2d question by same. V. H. Houseworth, a witness heretofore examined in this case, says that he had a conversation with you after you had seen the land, in which you told him that your object in purchasing was to sell the property as mining property, not to work it yourself; that

you were not a gold-miner, but engaged in the iron business, in which you used a hundred tons of coal a day; that you had bought the mines from Dr. Grymes on a speculation; that he remarked to you that you had given a pretty good price for it, and that you replied, "I don't know, but I will make my money out it;" that you said that you had
231 just come from the land, and that there were two or three persons washing on it for surface-gold, and were making twenty dollars a day. He did not understand whether each or all of them were making that amount; that you seemed very much pleased with the purchase, and thought you would make money on it. That witness describes himself as thirty-six years of age. Do you remember to have had any such conversation with such a person? Were you pleased at that time with your purchase or otherwise? Did you, after your visit to the land, expect to make money out of it?

Answer. I have no recollection of having a conversation of that kind with anybody; was not pleased with the land when I left it. I felt as though a fraud had been perpetrated on us. Never said that we bought as a speculation to any one, and we intended to work it; had our arrangements to do so. Had brought a man with us for the purpose. (Mr. Bowman was the man I allude to.)

3d question by same. A witness examined, Peyton G. Hume, gives, among other things, his account of your and Mr. Repplier's first
232 visit to the land. He admits that he believed the shaft, which is one of the controverted points in the cause, was on the land you purchased of Dr. Grymes, but says that he didn't know the lines of the land. Did, or did not, the said Hume take you to the line of the land, which would have included the said shaft, and show it to you as the true line?

Answer. He did.

4th question by same. He says in his deposition that you asked him to show you the lines of the land, and to take them to the shaft that Fisher & Catlett had been at, and that he told you that he didn't know the lines. Did he tell you so or not?

Answer. He told us that he did know the lines, and took us to the shaft spoken of by Fisher, and showed it as the line. Johnson corrected them, and said that was not the line; that the line was some distance south of that point.

5th question by same. State exactly, as near as you can, how Mr. Johnson corrected Hume's representation, & whether he did so secretly or openly at first?

233 Answer. My impression now is that he took me to one side & told me that was not the line; that he didn't want to have anything to say about it; that he was living close by the property, and that he was a friend of Dr. Grymes, & he might be angry, or something like that. My impression is that he was not living on the property, but near by. I am not sure it was before or after the conversation with Hume in reference to the line, that Johnson took me to one side & told me such was not the line.

6th question by same. Did Mr. Hume suggest to you to send for Mr. Johnson because of his ignorance of the line? State, if you know, how Mr. Johnson happened to be there, and whether he came before or after your interview with Hume?

Answer. I don't know. I think we went to Johnson's to get lodgings before we saw Hume, tho' I can't remember positive. Johnson went with us. I don't remember how we procured his services.

7th question by same. Were you present in Philadelphia at the time when the original contract was closed between you and Mr. Repplier & Dr. Grymes for the land in controversy?

234 Answer. I am not positive of that, but my best recollection is that I gave Repplier my half of the money. Mr. Catlett represented that Dr. Grymes was an honorable man, and if there was anything wrong he (Grymes) would refund the money. We had no knowledge of the title, lines, or anything else of the land, only from Mr. Catlett's representation of Dr. Grymes as an honest man.

8th question by same. Do you remember whether, before the contract was concluded, Mr. Catlett in any way assented to the correctness of a report made to you by your agent, Mr. Fisher, concerning the land you purchased?

Answer. Mr. Catlett gave a very glowing description of the property all the time. I think Catlett and Fisher were both together when they made their representations. I think it was a verbal statement, in which they both agreed. I do not remember that there was a written statement at all.

X-examination by defendant's counsel:

1st question by defendant's counsel. When was it—I mean at what time of the year—that you were informed by Dr. Grymes' daughter that he was sick and could not be seen?

235 Answer. I don't rocollect the time of the year. It was my first visit to the property. (The house is a frame building. When we approached the house we went into the porch, and was there met by a young lady, who informed us that Dr. Grymes was sick.)

2d question by same. Did you ever visit the property more than once?

Answer. No, sir.

3d by same. Who accompanied you on that occasion? Did you pass by Orange Court-House on your way to the property, or only on your return from it?

Answer. On our way to the property we went by the way of Fredericksburg. George Repplier, Maj. Bowman, & Harry Repplier accompanied me to the property. When we left the property I stopped at Dr. Grymes', where I saw the young lady. I went home by the way of Orange Court-House. I stopped also at Mr. Williams' that day. The other parties went home by way of Fredericksburg.

4th question by same. To what Mr. Williams do you refer; was it Mr. William G. Williams?

236 Answer. He was a young man, that is to say, he is the son of the older Williams, at whose house I stopped.

5th question by same. Was he the same person who had investigated the title to the land in controversy for Mr. Fisher, as your agent, before the purchase was made by you and Repplier?

Answer. I know nothing at all about the investigation. Mr. Fisher was sent up as the agent, to examine into the title, after he had visited the land, and before the purchase was made.

6th question by same. Were you not informed that in making the investigation he had the aid of the young Mr. Williams, of whom you have spoken?

Answer. No, sir; I had no information he had the assistance of any one.

7th question by same. At what time did you arrive at Orange Court-House on the occasion you have referred to? At what hotel did you stop, and how long did you remain at the place?

237 Answer. My impression is that I arrived at Orange C. H. about 3 or 4 o'clock in the afternoon; stopped at Ricket's Hotel, remained there all night, and left on the 12 o'clock train next day. I don't know the name of the hotel. It was on the left-hand side going up from the railroad; a brick house, where the dining-room was in the basement.

8th question by same. Did you make known to any person while you were at or in the neighborhood of Orange C.-House on that occasion the dissatisfaction which you say you felt with the purchase you and Repplier had made, because of your having ascertained that the shaft was not on the land?

Answer. No, sir; not to my knowledge. I had no conversation there with anybody about it.

9th question by the same. Did you or not have any conversation with anybody about the land you and Repplier had purchased, or about anything connected with the purchase of it?

Answer. Not that I know of. I have no recollection of having conversation with anybody about the purchase or the land in any way.

238 10th question by same. Did you make or meet with any acquaintances on the occasion of that visit to Orange Court-House; and did you or not converse with any person or persons while you were there?

Answer. I don't know of having any conversation except about a horse—my memory is not that long. I have no knowledge of making the acquaintance with anybody. I was talking to Mr. Williams about the horse. I don't recollect of talking with anybody else on any subject the whole time I was there. I might or I might have not talked to others.

11th question by same. You say you were talking to Mr. Williams about a horse. What horse do you refer to?

Ans. It was in common conversation about two horses. Mr. Fisher had made the arrangement for the purchase of a horse from Mr. Grymes (a son of Dr. Grymes) for me. I bought a horse the same day from Mr. Williams. The only conversation I remember of ever having had with any one was while I was talking to Williams at Orange Court-

239 House, after I had seen him at his father's, when some man, whose name I did not know, stepped up after I had left Mr. Williams, & said he had as good a horse, which he would sell for half the money.

12th question by same. As I understand you, you called at Williams' father's house to see him as you were on your way from the land in controversy to Orange Court-House; and your object in so doing was to see him about a horse for the purchase of which from Grymes, Fisher had made an arrangement on your behalf; why was it that you called to see Williams about the horse you expected to buy from Grymes?

Answer. I had received a letter from Williams in reference to the horse; Fisher had directed me to write to Williams about Grymes' horse; I done so, and he replied.

13th question by same. Did you not understand from Fisher when he told you to write to Williams about the horse you wished to buy from Grymes, that Williams had been aiding Fisher in his investigations about the title to the land, or that he had something to do with the matter of the land purchase, as well as that he would act for you in reference to the purchase of the horse?

240 Answer. I never knew anything about it at the time; since the bringing of the suit I have learned a good deal I never knew before.

14th question by same. Do you mean to be understood as saying that you have no recollection of any conversation whatever with any person at or in the neighborhood of Orange Court-House, on the occasion of that visit, except only in reference to the horses for the purchase of which you were negotiating?

Answer. I do mean to be so understood. I don't now know whether I had any conversation with anybody about the property. I might have, but don't remember now. I went there for a special purpose.

15th question by same. Was it not your object in going to buy the horse or horses for the purchase of which Fisher had made an arrangement on your behalf?

Answer. No, sir. I went there to see Dr. Grymes. I had arranged to have the horse that Fisher had bought to be shipped to me by express. I was not induced to go there about the horses.

241 16th question by same. Did you make any other effort to see Dr. Grymes on that occasion besides the one you have mentioned, when his daughter told you he was sick?

Answer. I did not.

17th by same. Did you leave any message for him, or write any letter to him?

Answer. I did not; my next interview with him was by an appointment with Catlett.

18th by same. When was that "next interview?" (by which I understand you to mean your first interview, as you have said you did not see him on the occasion referred to.) I mean how long was it after your first visit to Orange Court-House, on your way back from the land, that you saw Dr. Grymes by an appointment with Mr. Catlett?

Answer. You understand me correctly as to my meaning the words "next interview" propounded in the question. I can't remember the length of time after my first visit.

242 19th question by same. Can you not recollect the season of the year in which each or either visit was made?

Answer. No, sir.

20th question by same. In your answer to the second question asked you by the plaintiffs' counsel, you state you "have no recollection of having a conversation of that kind with anybody," referring to the conversation which, as stated in said question, V. A. Houseworth has testified that he had with you; do you mean to be understood as stating that you did not have such a conversation with said Houseworth, or merely that you do not now recollect it?

Answer. I do not recollect now of having a conversation with him or anybody else about the property. I mean to say emphatically that I do not now remember. I came there with the conviction that I had been plundered and robbed out of that amount of money, and had I met Grymes, would have been apt to have said something harsh to him, as I would have done to Williams, had I known at the time he was interested in the matter, & had a share in the plunder, as I have since learned.

243 I don't know that I had a conversation with anybody; I might have talked with Houseworth, but, if so, treated the matter lightly.

21st by same. When was it you, Repplier, and others arrived on the land in controversy on the visit you have referred to, when you were told by Johnson that the shaft was not upon it, and how long did you remain there?

Answer. My impression is that we left Washington in the morning, and arrived on the ground in the afternoon, probably 4 or 5 o'clock, went on the property both evening & morning, staid all night with Johnson, & left the next day after arriving, or the day after, I don't remember which.

22d question by same. You have stated in your answer to the second question of the plaintiffs' counsel, that you had made your arrangements to work the property and had brought Bowman with you for the purpose. Is it your meaning that if you had not ascertained that the shaft was not on the property, Bowman would have gone on at once to work it for you, and that he did not then do so because of this discovery?

244 Answer. That was our intention; you understand my meaning correctly. When we first made the purchase it was our intention that Mr. Fisher should work it, but he had gotten into other business.

22d question by same. Do you mean that as soon as you ascertained that the shaft was not upon the land (as you did from Johnson while you were there) that you determined to rescind the contract of purchase, and demand back the money you had paid?

Answer. Yes, sir.

24th question by same. Did not you and Repplier before leaving the place, and after you had been informed by Johnson that the shaft was not upon the land, make an arrangement with Peyton G. Hume by which he was to take charge of the place for you?

Answer. My impression is that before we discovered the shaft was not on the property we had spoken to Hume to do some work by sinking a shaft, but after finding out that the shaft was not on the land, we abandoned giving him employment. My impression is that

245 Bowman done all the work that was done.

25th question by same. You say that after finding out that the shaft was not on the land, you abandoned giving Hume employment. Did you notify him of that change of purpose on your part?

Answer. I think not. I don't know what was done. I think Repplier and him had some negotiation about the work. I don't know what it was. I don't know that he done work. He may or he may not.

26th question by same. What I wish to know is whether, after learning that the shaft was not upon the land, you told Hume that you did not intend to keep the land and would have no use for his services?

Answer. I don't know that Hume was employed at all; there was a negotiation going on between him and Repplier; he may have done work and he may not. I don't know.

27th question by same. Your answer does not respond to my question. I again ask whether, after you found out that the shaft was not upon the land, you & Repplier, or either of you, told Hume that you would

246 not keep the land & had "abandoned" your purpose of "giving him employment?"

Answer. I don't know anything about it; I left Repplier & him on the ground. I don't know that I gave him any notice about it; don't think I had much to say to him.

28th question by same. Peyton G. Hume states, in his deposition, which has been taken in this case, that on the morning after you had been informed by Johnson that the shaft was not upon the land, and before you left the property, Repplier desired to know of him what arrangement he could make with him by which you & Repplier could have the property explored, and that he stated the terms upon which

he was willing to go on to explore it for you; that both you and Repplier agreed to his proposition, and that Repplier called upon you to know if you had any funds in hand that they might be left with him, and finding that you had none that you could spare, Repplier stated that upon his return to Philadelphia, he would send him (Hume) a draft to Fredericksburg; that under this understanding you and Repplier left the place, having directed him to get the hands, tools,
247 &c., and to go to work at once, and that you would pay all the expenses. Is your recollection different from this, and are you to be understood as saying that this arrangement was not made with Hume as has been stated by him?

Answer. I think that Repplier and Hume had some such understanding as referred to in the question; whether ever carried out or consummated I don't know. I have some indistinct recollection of Repplier calling on me for money.

29th question by same. Was not this property subsequently to that time placed by you and Repplier, or by one of you acting for both, in charge of a man named Thomas C. Gordon, as your agent?

Answer. No, sir; we always refused letting anybody have it. We had several letters from different parties. My impression is that they were invariably refused, as we would have nothing further to do with it, after we discovered that the shaft was not on the land.

30th question by same. Was not Bowman sent by you & Repplier to make explorations on the land for gold, subsequently to your discovery that the shaft was not on it?

248 Answer. My impression is that Bowman was left there to make explorations on the land, after we found that there was no shaft on it.

31st question by same. Do you mean that you left him there for the purpose of making those explorations on the same occasion that you were informed by Johnson that the shaft was not upon the land?

Answer. Yes, sir; my impression is that Bowman was left on the land at the time, & that is the reason I think Hume was not employed, tho' I may be mistaken in that. He may have done some digging.

32d question by same. Why was it that you left Bowman there to make explorations for gold, if you had determined not to take the land, because of your discovery that the shaft was not upon it?

Answer. I can't answer; it was some arrangement of Mr. Repplier; he had an idea that it was best to dig some holes, though it was against my wishes in the matter.

33d question by same. Did you not know that subsequently to
249 the discovery by you that the shaft was not upon the land, Bowman, as the agent of Repplier and yourself, did make explorations for gold upon it, and did you not acquiesce in his doing so?

Answer. I know that Bowman made explorations, at least was so informed. I don't know whether I acquiesced or not; I think it was mostly done by Repplier; I was a little indifferent about it.

34th question by same. When did you first notify Dr. Grymes that you would not take the land, and would require him to return the money you had paid for it?

Answer. That I can't answer, at what date or what time or how it was done. I met Dr. Grymes at Orange Court-House in company with Mr. Catlett, and I spoke to Dr. Grymes about refunding the money, as there had been a mistake, there being no shaft on the property, and he told me it would be impossible for him to give me the money, as he had loaned some of it out, & paid some out. I told him I would take

250 security for the money, such being the case, in a reasonable time.

He promised to let me know in two or three days, which notice I never received from Dr. Grymes, & left me under the impression that he could pay it back, & I so said when I went back to Philadelphia. This was long after those other conversations which occurred between Williams, Hume, & others.

35th question by same. Was Dr. Grymes ever notified of your purpose to rescind the contract and require him to refund the money until after Bowman had completed his explorations for gold upon the land, and reported their result to Repplier and yourself?

Answer. That I can't answer.

36th question by same. You have stated that in the conversation you had with him in the presence of Catlett, Dr. Grymes left you under the impression that he would pay the money back. Did he say anything indicating that he considered himself bound to do so, or that you had a right to require a rescission of the contract? If so, repeat all that he did say about it.

Answer. No; he did not say anything of that sort. I inferred
251 from his manner that he would pay the money back, & said he would let me know in a day or two; he told me it would be impossible for him to get the money, as he had loaned some of the money out and paid some out.

37th question by same. Did not this conversation take place several months after Bowman had finished his explorations for gold, and you had determined not to keep the land, and were not the interview and conversation which ensued had merely for the purpose of seeing whether the controversy which had arisen between you and him could be amicably adjusted?

Answer. It was several months after Bowman had those explorations. My impression was that I was brought there for the purpose of getting security for my money. The idea was conveyed from Catlett's letter to me that such was the purpose.

38th question by same. Did not Dr. Grymes say distinctly that he had made no misrepresentations whatsoever, and that no one acting by his authority had done so, & that the contract, so far as he was concerned, was perfectly fair, and that there was no just ground for setting
252 it aside, or words to that effect?

Answer. No, sir; nothing of the kind passed between us. Our words were very few and very short.

39th question by same. Had not Dr. Grymes written letters, or a letter, to Repplier and yourself, or one of you, previously to that time, to the effect stated in my last question?

Answer. No, sir; not to my knowledge. He may have written to Repplier.

Recalled by plaintiffs' counsel:

Question by same. Are you distinct in your recollection, in the state of your mind, and of your determination in reference to the property at the time when you went to Orange Court-House from it?

Answer. I am distinct with regard to my mind at that time.

Question by same. In the state of your mind in which you then were, could you have held such a conversation with the witness, Houseworth, or with anybody else, as he represents?

253 Answer. I have no reccollection of ever saying anything of the kind to him. I was very much outraged at the fraud which had

been perpetrated upon me. I might have had some conversation with him, but know nothing of it.

And further this deponent saith not.

JAMES LANIGAN.

HOWELL FISHER, another witness of lawful age, introduced by the plaintiffs, being first duly sworn, deposes and says:

1st question by pl't'ffs' counsel. Mr. Peyton Grymes, a witness for the defendant in this case, says that before they got to the house, meaning the house on the Vaucluse land, he (Grymes) told Catlett & Fisher that he didn't know the lines of the land, and proposed to send for a Mr. Johnson, who lived in the neighborhood & was well acquainted with it, that he might point them out. Fisher replied that he didn't care to have them point them out; that he only wanted to take a general look at the land and the character of the country; that he must get back to Orange C. H. by 12 or 1 o'cl'k next day; that he therefore didn't send for Johnson, but for Peyton G. Hume, who was nearer, &c. State if you recollect any such conversation, and as accurately as you
254 can what, if anything, passed on that subject.

Answer. I have no such recollection of any such conversation. We got to the house after dark, dark nearly half an hour. We went to the house, found the proprietor of the house absent from home, with the wife and daughters and some visitors present. We found we could get nothing to eat, and agreed to go to bed & get up as early as possible & examine the prominent points, such as we had time to do. We got up early, and I understood that Mr. Peyton Grymes would show us what we were to see; that he said, to enable us to get off, he must feed the mules & send for Mr. Hume, who would show us what we wished to see. Mr. Catlett and myself went to where Mr. Hume was washing some gold, who showed us the result of what he had been doing. He then took us from there to the shaft. We remained there a short time, 10 or 15 minutes, long enough for me to examine the earthy depositum & some rocks he pointed out to the west, (according to my recollection,) the workings of the Liberty Mining Company, the course of that vein. After some examination we heard the voice of Peyton Grymes; that he was ready, being in a carriage out on the road, saying
255 he was ready, &, if wanted make the train, come on. We then started for Orange Court-House. We got up at daylight, and had nothing to eat that morning. In fact we had nothing to eat from the time we left Orange C. H. till we got back again, except a lunch Peyton Grymes brought out to us from his father's house, just after we started from Orange C. House the day before.

2d question by same. The same witness, Peyton Grymes, states that no such conversation took place, on the road or elsewhere, as you deposed to in your former deposition, and no such representations or statements as those attributed to him by you; that he does not recollect that the shaft was mentioned in any conversation as mentioned by you & him, & knows that he never represented that any shaft was represented as being on the land then belonging to his father, or said anything from which such inference could be drawn, nor heard any one else speak of the shaft as being upon the land; that if he had, he would have at once corrected it. Please state here anything that you may distinctly recollect as being said by Mr. Peyton Grymes on that
256 subject, on the road or elsewhere, and state further whether you have any doubt of what you have said in your deposition as true.

Answer. I have no doubt what I said in my former deposition is true.

The shaft I enquired particularly about, as it was the only portion of the property pointed out by Mr. Grymes as having relation to the gold-bearing value of the property, except the vein as pointed out as we left the house, and said that it ran under the house and through the property, and considered it as rich as the vein at the shaft—what he called the Liberty or Vancluse vein. I remember particularly Peyton Grymes stating that the quartz taken from the shaft that we had come from had been worked in a Chilian mill, in a rude way, & that in the hands of men who worked it in a modern improvement it would undoubtedly be profitable. There was no question at all as to whether the shaft was on the property, but was treated by us in our conversation as an acknowledged fact. The question was not mooted as to whether the shaft was or was not on the land.

257 3d question by same. Mr. Peyton G. Hume, another witness for def't, says he did not know, on the occasion of your visit to the said property, for what purpose he was sent for to meet you, and that if had understood that he had been sent for to show you the line, he would have told you that he did not know the line near the shaft, altho' he admitted that, in his opinion, it included the shaft on the land that was sold; that he received no information of what he was sent for about, from the message he got to come, & that nothing was said after he got there to enlighten him. Will you please state all that you know on that question? whether he pointed out the shaft as within the line, whether anything & what, passed upon the subject of the object of which he was sent for, & whether or not he expressed any ignorance about the line.

Answer. Mr. Peyton Grymes sent for Mr. Hume. What his message was to Mr. Hume I have no knowledge. I only know that Mr. Hume met us, & appeared to understand that he was to show us the property, demonstrating the prominent points, showing the value of the property as a gold-property, and took us to the washing, and finally

258 to the shaft, (I am distinct on that point,) & showed us the shaft as upon the property to be sold. I recollect that he or Mr. Grymes spoke of the timber-land, which was disjointed from the farm-land some distance, & I answered that I did not want to see that land; that what I wanted to see was the gold-land. The timber-land was said to be outside of the gold range.

4th question by same. Do you remember what Mr. Hume said or did when he got to the shaft, or before he reached there, to satisfy you that he considered the shaft as within the lines of the land to be sold?

Answer. I don't recollect distinctly what he said after looking at the washing. He said he would go or take us to the shaft, or something to that effect; at least it was at his invitation that we went to the shaft. I can't recollect now anything he said or done particularly, but understood from him that this shaft had been worked by his grandfather, (Dr. Grymes,) and that it was upon the property. This belief and understanding was got from him, but I can't say now what words he used, or did at the time.

259 5th question by same. Did you have much conversation with Mr. R. H. Catlett during and after your visit to the land? If so, say what he done or did before the consummation of the contract by way of representing to you, as the agent of the purchasers, or to the purchasers themselves, within your knowledge, that that shaft was on the land to be sold, and on the subject of its value.

(The defendant, by counsel, objects to the foregoing question.)

Answer. Prior to my visit to the property, Mr. Lanigan, Mr. Catlett,

and myself were travelling together, and Catlett represented that he had this property for sale for Dr. Grymes. He spoke of the doctor's having made a great deal of money out of it, & that it was valuable property. Mr. Lanigan agreed that he should write to Orange Court-House & have parties to meet Catlett & myself there and take us to the property. After our visit there we had several conversations in regard to the value of the property, particularly as to the value of this vein upon which this shaft is situated. We discussed the matter as to its
260 value, and Mr. Catlett expressed his desire that these gentlemen should have the property, as he understood it was exceedingly valuable. Most of this conversation occurred in Philadelphia. Whether Mr. Catlett had seen Mes'rs. Lanigan & Repplier or not, I don't know; but I repeated to them this discussion of Mr. Catlett. Mr. Catlett and myself dwelt wholly upon the idea that this shaft was upon the property. It was treated as a fact, and I negotiated for its purchase with Catlett, & reported to them the land valuable as a gold-property wholly upon the information I had received of the value of the vein upon which this shaft was, and on the basis it was on the property, and was part of the land purchased.

6th question by same. In your former deposition you say, without specifying what was said or done, "Mr. Catlett & myself fixed the point marked shaft as the point where the shaft was located;" and again you say "I located the shaft and gold-veins from conversations with Mr. Catlett, & myself made a pencil-note of this shaft & the gold-veins. From conversation with Mr. Catlett & the doct'r' sons, & other information I received during the visit, Mr. Catlett & myself made a
261 pencil note of this shaft upon the original map, and we thought we were perfectly right; Mr. Catlett agreed with me perfectly." Please state what Mr. Catlett said or did to satisfy you that he agreed with you in all the above matters perfectly. Specify what he did or said, particularly in reference to the location of the shaft and the gold-veins upon the map.

(Defendant's counsel objects to this question.)

Answer. My recollection now is that we had the map before us, either at Dr. Grymes' or in Philadelphia, and the precise location on the map was talked of, and we both agreed upon the point as marked upon the map as the location of the shaft. On the map, where the shaft is marked, two roads came together, and on the ground at the shaft two old roads came together. We agreed perfectly that the point marked for the shaft was the real point of the shaft on the ground. That belief was never changed, at least on my part, until actual survey proved otherwise.

By consent, the further taking of these depositions *are* adjourned until to-morrow morning at 10 o'clock.

262 Teste:

WILLIAM A. BURNETT, *N. P.*

FRIDAY, *February 4th*, 1870.—Met pursuant to adjournment. Present, same parties as on yesterday.

X-examination of the witness, Fisher:

1st question by counsel for defendant Grymes. When and by whom did you first hear anything said about the shaft to which, as you have stated, you were taken by Peyton G. Hume, and understood to be on the land in controversy?

Answer. I am not certain whether I first heard Mr. Grymes speak of the shaft on the ground that morning, or whether my first knowledge of it was derived from Mr. Hume taking us to the shaft. My impression is that Mr. Grymes first spoke of the shaft in walking from the mansion-house, & said Mr. Hume would show us. I don't remember to have heard anything about the shaft until that morning when we were taken there.

2d question by same. Will you repeat, as nearly as you can recollect it, exactly what Mr. Grymes said that morning when, as you say, your impression is that he spoke of it, and said that Mr. Hume would
263 show you the shaft, if he did in fact say anything on that subject?

Answer. My recollection this time is, of course, very indistinct as to what he said. We (Mr. Catlett & I) were entirely in his hands as to the points we were to visit. After we came out of the house, Mr. Grymes informed us he could not go with us; that he would get the horses; and my impression is that he said Mr. Hume would show us the shaft, but of this I will not be certain. My distinct recollection is that we were taken there; that is about all that I now distinctly recollect about it.

3' question by same. If Mr. Grymes did say anything that morning about Mr. Hume's taking you to the shaft, was Mr. Hume present or within hearing of him when he did say so?

Answer. He was not. I did not see them together that morning.

4th question by same. How did you know what direction you were to take to meet with Hume that morning?

Answer. Mr. Grymes told us where we would meet Mr. Hume.
264 We met him just outside of the field, is my recollection. He told us the direction or path to meet him.

5th question by same. Describe the appearance of the shaft in question, and how long it seemed to have been abandoned.

Answer. It would be impossible to tell how long the shaft had been abandoned from its appearance; there was nothing left there; except the mere hole & earthy deposit, all means of the working shaft & timber had been removed.

6th question by same. Were there any other shafts in the vicinity of this one? If so, how many did you notice, and at what distance from it?

Answer. I noticed no other shaft, except some workings pointed to me, apparently to the west, some one or two hundred yards distant, said to be the workings of a mining company. There may have been other shafts, but I do not now recollect.

7th question by same. Will you try and recollect whether you did not visit the shaft pointed out to you, as you say, at one or two hundred yards distant, apparently to the west, or some other shaft, or shafts,
265 in that vicinity, and get from it or them some specimens to take with you.

Answer. I did not visit any other shaft for the purpose of getting specimens; I am positive on that subject. While at this shaft, we heard Peyton Grymes' voice, calling to us to come, he was ready.

8th question by same. You say that you did not visit any other shaft for the purpose of getting specimens. Did you visit or pass near to any other shaft that morning for any other purpose, or did you do so at all?

Answer. My recollection now is that we did not.

9th question by same. You have said that the question whether the shaft to which you went was or was not upon the land which was pro-

posed to be sold was not mooted at all between you and any of the parties with whom you had conversations respecting it, or by any of them in your hearing, but that you understood it to be a conceded fact that it was upon that land. Did any one tell you in express terms, or say in your hearing, that this shaft was upon the land then owned by Dr. Grymes, and which was proposed to be sold.

266 I do not recollect that any one in express terms said this shaft was upon the land proposed to be sold. But Hume undoubtedly pointed it out as upon the land, and Mr. Cattlett and I, in all our discussions with others, treated it as a fact, and my belief was never corrected until Mr. Lanigan informed me it was a mistake. In fact, I denied it then, and thought the parties were still mistaken about the survey of the line.

10th question by same. You say "Hume undoubtedly pointed it" (the shaft) "out as upon the land." Did he do anything more in the way of pointing it out as being on the land than you have already stated in this deposition, that is to say, by carrying you to it after you had visited the place where he had been washing for gold?

Answer. There is no doubt but what he took us to the shaft; and, from his words and actions, left us entirely convinced that such was the fact. My recollection is entirely distinct that he pointed out the shaft as being upon the property. His precise words I do not now remember. I have already stated all that I now recollect that he said or did at the time.

267 11th question by same. You say in answer to my ninth question that you and Mr. Catlett treated it as a fact, in all your discussions with others, that the shaft was upon the land; do you mean to convey the idea that you and he told the other persons with whom you conversed, that you understood the shaft to be upon the land, or merely that you yourselves so believed and understood, and took it for granted that they understood so too, as nothing was said by them to indicate that they did not?

Answer. I mean to say that having been shown this shaft as upon this property, we had no doubt upon the subject, and therefore asked no questions as to whether it was or was not upon the land, but in all our discussions treated it as a fact, and we were never disabused in that belief in all our discussions with other parties. We did not say to other parties in express words, this shaft was on the land, because we had no doubt of the fact, and nothing was done or said by others to raise any doubt in our minds.

12th question by same. The plaintiffs' counsel has interrogated
268 you in reference to Mr. Catlett's representations as to this shaft's being on the land. Did Mr. Catlett ever profess to know anything about the matter (that is to say, whether the shaft was or was not upon the land) except what he learned about it when you and he were together on the occasion of your visit to the land, of which you have given an account?

Answer. No, sir, he did not; his knowledge was derived at the same time and from the same sources that mine was.

13th question by same. You say in your answer to the first question asked you by the plaintiffs' counsel, that you got to the house on the land nearly a half hour after dark, and found the proprietor of the house absent from home, with the wife and daughters & some visitors present. Be so good as to state how many persons you found there. How many of them were males, and how many were females, giving the names of any that you may recollect the names of?

Answer. I don't know the names of any we found, what I supposed to be the mistress of the house, two daughters, and two male visitors; my recollection is that some sort of introduction passed, but I don't remember the names at all; we sat down rather outside the circle, found there was no chance to get anything to eat, & then retired.

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14th question by same. On hearing the names of Thomas C. Gordon and of Bullard, does it refresh your memory so as to enable you to say whether the persons you met with there bore those names?

Answer. It does not.

15 question by same. Did you have, or hear, any conversation that night with any of the parties with whom you met at the house about the object of your visit to the land, or was anything said in your hearing about the gold-bearing properties of the land?

Answer. My impression is that nothing was said about it. I don't know what Mr. Grymes may have said; Mr. Catlett and I certainly did not. My present recollection is that nothing was said about the property or the gold-bearing qualities that night. Mr. Catlett and myself were both together, from the time we arrived there until we left, having slept together in the same room and retiring at the same time.

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16 question by same. Did you not hear anything said while you were there about the richness of the land for surface-washings of gold?

Answer. I do not recollect now that I did; I heard a good deal of talk from Dr. Grymes and others about the richness of the earth for surface-washings. I did not pay much attention to it.

17th question by same. State the names of all the persons, as well as you can recollect them, with whom you met while you were at the house of Dr. Grymes after your return to Orange Court-House.

Answer. I met with the doctor, (himself,) Peyton Grymes, jr., Mr. William G. Williams, Mrs. Grymes; there was a relation or friend; I think his name was Bailey; there were one or two ladies whose names I do not know; this man whom I supposed to be named Bailey, said he had worked on the land. I understood him to say that he had washed for surface-gold in a little creek on the land. Mr. Catlett was also there with me.

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18th question by same. When did you first see a plat of the land? Did you have it with you when you were on the premises, or not?

Answer. I first saw a plat of the land at the doctor's house. That is my recollection of it.

19th question by same. What was done with the plat then shown you? Did you or Catlett take it away with you, or not?

Answer. I think the plat was left in the hands of the doctor. When I next saw it Mr. Catlett had it in Philadelphia. I am not entirely distinct on the subject. I may have seen the map on my second visit, when I examined the title. It may have been handed me at that time. My recollection is not distinct.

20th question by same. If you did next see it when "Mr. Catlett had it in Philadelphia," was that before or after the contract for the purchase of the land had been consummated?

Answer. That was before the contract had been consummated.

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21st question by same. When did you make your second visit to Orange Court-House, and who then aided you in examining the title to the land?

Answer. I don't remember when I made the second visit; it was a

short time after the first. William G. Williams aided me in making the examination of the title.

22d question by same. Did there appear to be any difficulty about the title to, or quantity of, the land? If there was, state what it was, & whether or not it was removed?

Answer. Upon examination of the records, & of the will of Dr. Grymes' mother, I found the title of the doctor to be good, but on comparison of the quantity named in the will, and the conveyances by the doctor of portions of this land, he did not appear to have the quantity left that he then claimed to own and the plat called for. My impression is that the quantity fell short two hundred acres. The will called for six hundred acres, and the conveyances for two hundred acres each.

273 He claimed, and the plat called for, about 400 acres, as still owned by him. My recollection now is, that on the visit to the doctor's, he explained satisfactorily the quantity, and I know that *the* at the time I was satisfied that he owned the quantity claimed to be owned by him.

23d question by same. Were you or not informed on the occasion of your first visit, that Dr. Grymes had sold off portions of the tract originally owned by him, and whether those portions had been sold as gold-mining property, & so worked by the purchasers respectively?

Answer. My recollection is that I was so informed on the occasion of my first visit.

24th question by same. Was the plat of the land to which you have referred ever delivered into your possession? If so, state when, as well as you can remember.

Answer. I had it in my possession temporarily, & it was attached to the contract.

25th question by same. Is this the same plat which was made by C. W'm Fry, and which was identified by an endorsement thereon made by Mr. Catlett?

274 Answer. That is that plat of which I speak, the one endorsed by Mr. Catlett.

26th question by same. When it was handed you did it have the word "shaft" marked upon the portion of the land then owned by Dr. Grymes, or any lines made with a lead-pencil indicating the direction of the veins or supposed veins of gold; or did it have upon it a yellow line drawn under the words, "old Vancluse mine," & passing over the letter I; or did it have any words whatever written with a lead-pencil upon it; and if it did not have all or any of these lines or words? State, if you know, by whom they were placed upon it, and at what time.

Answer. My recollection is, that it did not have any shaft marked upon it, nor any lines indicating gold-veins. My recollection is that I marked the gold-veins upon the map after the purchase of the property, altho' I won't be positive as to that. Mr. Catlett and I identified the location of shaft on the map, as I have before stated, at the two roads coming together. I think it was at the doctor's house, on our first visit,

275 but I can't say it was with the knowledge of the doctor, or any one there present; and I am not positive it was done at that time; and in saying that we identified the point where we supposed the shaft to be, I do not mean to say that we wrote the word "shaft," or made any mark on the map to indicate it at that time. The word was written subsequently.

27th question by same. How long did you remain under the impression that the shaft was at the point at which you marked it in pencil on the plat referred to; and when you heard that the shaft was not upon

the land sold by Dr. Grymes to Repplier & Lanigan, what did you suppose to be, and say was, the explanation or key to the whole matter?

Answer. I remained under the impression that the shaft was at the point on which I marked it on the plat, until after the survey made by Hotchkiss, made more than a year afterwards. My idea was that the plat covered the shaft, but that Dr. Grymes had made some conveyance that he had forgotten, and that Williams & I had overlooked in our examination.

28th question by same. You have said in answer to my sixth question that at the time you were at the shaft with Peyton G. Hume,
276 there was pointed out to you a shaft some one or two hundred yards distant, apparently to the west, said to be the workings of a mining company. Of what mining company was this shaft so pointed out to you said to be the workings?

Answer. My recollection is the Liberty Mining Company.

29th question by same. Did you understand that the land then owned by Dr. Grymes, and which he proposed to sell, was divided into two separate parcels, one of them being separated from the other by land which had been previously sold by him for mining purposes?

Answer. I did so understand. The timber-land was separated some distance from the gold-bearing land, by a piece of land which Dr. Grymes had previously sold for mining purposes.

30th question by same. You have stated that you went to examine the property as the agent of Messrs. Repplier & Lanigan. How were you to be compensated as such agent? Were you to have an interest in the property if purchased by them, or in the proceeds of its
277 sale, if they should sell the same as mining-property, or an interest in the stock if a joint-stock company should be created? State fully what, if any, interest you had or expected to have in the property or its proceeds.

Answer. I had no understanding at all at the time. I went to visit the property on that subject after they had concluded the purchase of the property. There was an understanding that if the property turned out valuable, I was to have an interest in the profits; this was a mere verbal understanding. They wanted me to go down and work the property, that is to say, to open & develop it. I declined to do that; they then undertook to do it themselves, and I had nothing further to do with it. I never heard of any stock operations proposed by Repplier or Lanigan. They did, after I declined going down there for them to d'velop it, propose to sell the property; this was before either of them had been on the premises; when they found that I would not go down for them, they thought they had better find a purchaser for the property.

31st question by same. In what form were you to receive your compensation as agent; was it out of the profits that might be made
278 on a sale of the property by them, or how?

Answer. There was no definite understanding as to that, except that they proposed I should go down and work the property, and receive one-third of the net profits in addition to a salary. When I told them that I could not go to take charge of the property, Lanigan said that they would not have purchased it had they not supposed that I would take charge of the property and manage it for them, and as I would not do so, they had better find a purchaser for it. They would have undoubtedly given me a portion of the profits had they resold at a profit, but there was no agreement to that effect, as we had mutual confidence in each other, and having many transactions previous to that.

32d question by same. Please state whether or not you understand

the business of mining and engineering; also whether you are skilled in estimating distances and judging of localities.

Answer. I do understand the business of mining and civil engineering. I have great remembrance of localities, but cannot say
279 my judgment is particularly good as to distances. I consider it is ordinarily good in that respect.

And further this deponent saith not.

HOWELL FISHER.

RICHARD H. CATLETT, another witness, of lawful age, introduced, being first duly sworn, deposes and says:

1st question by plaintiffs' counsel. Are you the person who negotiated and consummated the sale of the Vancluse lands, (400 acres,) the property of Dr. Peyton Grymes, of Orange, to Messrs. George S. Repplier, of Philadelphia, and James Lanigan, of Pottsville, Pa.? If you are, state in what capacity you acted in said negotiation and sale, whether as principal or as agent of Dr. Grymes.

Answer. I am, and acted as the agent of Dr. Grymes in making the sale.

2d. question by same. Are you one of the firm of Echols, Bell & Catlett, part of whose business is to act as land-agents in Virginia? Did you act in this case as one of the members of that firm, or in your individual capacity?

280 Answer. I am, and acted in this case as a member of that firm.

3d question by same. Was your character of land-agent well known to Dr. Grymes at the time you undertook to act for him in that business, and while you were engaged in that agency was there any contract or a deed conferring upon you or your firm either the legal or equitable title to said land?

Answer. I presumed so, as we had advertised our agency in different newspapers of the State, and had distributed circulars of our lands in every direction. There was no contract between Dr. Grymes & my firm which bestowed any legal or equitable title upon us. My understanding with Dr. Grymes was verbal.

4th question by the same. There is a letter here exhibited to you marked A, and addressed to Howell Fisher, of date the 12th of March, 1866, in your handwriting; was that date about the time of the closing of the contract for the land in controversy?

Answer. The letter is in my handwriting, & must have been about the time the contract was closed.

281 5th question by same. When you say in that letter, "He wants the deed made as soon as possible," and in another place, "Mr. R. wants to have it worked," who did you mean by "he" and by "Mr. R.;" what is to be understood by saying that Mr. R. wants it worked, and from whom did you get that information?

Answer. In both instances I refer to Mr. George S. Repplier, and the information for a purpose to work it, I must have obtained from him,

6th question by same. Who wrote the letter herein shown to you marked B, of July 13th, 1866; and a letter marked C, of September 6th 1866; and letter marked O, of September 24th, 1866; and a letter marked D, of October 26th, 1866; and a letter marked E, of December the 21st, 1866; and letter marked F, of April 26th, 1867; and a letter marked H, of date Sept. 21st, 1867?

Answer. I wrote them.

7th question by same. They are written & addressed to Mr. Lani-

gan, others to Mr. Repplier, and others to Howell Fisher, a wit-
282 ness in this cause; having read them, are you satisfied or not that so far as they relate facts in this cause, they are accurate and true.

Answer. They are certainly in substance accurate, but I may have in some cases, in the freedom of a letter, have stated impressions & inferences as facts, not being as careful in the language of a letter as I would be in a deposition.

8th question by same. In letter C, you state to Mr. Repplier that an opening or shaft was certainly exhibited to Fisher and myself by young Hume, a grandson of Dr. Grymes, as upon the doctor's land; and in letter O, you say there is no doubt about the fact that the said shaft to which R. refers, was pointed out to you & I, (meaning Howell Fisher,) to whom it was addressed by young Hume, as upon Dr. Grymes' land. Please state whether that was your belief when the said letters were written, and what is your present recollection about it, and at what time was it that you intended to be understood that the shaft was so pointed out to you & Mr. Fisher?

283 Answer. Mr. Fisher and myself, when we visited Vancluse property, were told by Peyton Grymes, jr., that young Hume would show us the property; we met young Hume, who carried us first to see the place where he had been washing for gold, and then went with us to the shaft to which the letters refer. I do not remember what transpired at the shaft or that he said a shaft was on the property; but from his having been sent for to go with us to show us the property, I took it for granted and felt certain that the shaft was upon the property & left there under that conviction. That conviction I entertained until it was ascertained beyond question that a mistake had been made, and that the shaft was not upon the property.

9 question by same. In letter H, addressed to Mr. Lanigan, you say that you have explained to me (Thomas J. Michie) that the land was shown to Fisher & you by young Hume, the grandson of Dr. Grymes, and that he took Fisher to a shaft or shafted vein, which he said was on Dr. Grymes' land, and that the land was bought by you under the impression and belief that the shaft was on it. Do you
284 know that the pl'tffs, Repplier & Lanigan, purchased that land under that belief?

Answer. Fisher, who visited the land with me, was acting as their agent, and doubtless communicated to them all the information we obtained concerning the property, and I take it for granted that they bought the property under the impression & belief that the shaft was on the property. I do not remember what conversation they had with me after we visited the property; but, under the conviction I had that the shaft was upon the land, I have but little doubt (if any) it was referred to by us.

10th question by same. In the letter marked B, written to Mr. Repplier, I presume, you say I saw Mr. Fisher, and he told me that you & Mr. L. had visited your "Vancluse" property, and were told while there by a Mr. Johnson that the lines of "Vancluse" property didn't include the land covered by the doctor's survey. Such a statement, you say, would be most astounding if it were true, but I have no hesitation in saying it is perfectly absurd. Was that letter written about the
285 time you first heard the rumor that the shaft was not on the land sold to Repplier & Lanigan previous to about that time; had you or had you not, from the period of your visit to that land with Mr. Fisher, doubted the fact that the shaft was upon the land to be sold?

Answer. The letter was written very shortly after I first heard the

rumor of the shaft not being on the property, and up to that time I had not a shadow of doubt in my own mind but that it was on the property, and was very much surprised at the rumor.

11th question by same. Did you and Howell Fisher, the agent at that time of the pl'tiffs, and a witness in this cause, concur in the point at or about which the word "shaft" was written on the map of this land stated in his deposition?

Answer. We did. I do not think that Mr. Fisher, who wrote the word "shaft" upon the map, and marked the spot, did so at the time we agreed as to its location. I have since seen the map, with the word "shaft" written upon it. I do not know when it was written there.

286 12 question by same. What compensation were you and your firm to get for your agency as the lands were sold? State, if you please, if interest could sway you, which side would your interest be?

Answer. Under my arrangement with Dr. Grymes, I (or, what is the same, my firm) was to receive as compensation what I could get over twenty thousand dollars for the property. If interest could sway me in giving my deposition, which, I trust, it could not, it would be against the plaintiffs on this suit.

The further taking of these depositions *are* adjourned until to-morrow morning, 10 o'clock.

Teste: WILLIAM A. BURNETT, *N. P.*

SATURDAY, *Feb. 5th*, 1870.—Present, same counsel as on yesterday.

The witness, R. H. Catlett, again appeared, & was cross-examined by def't's counsel.

1st question by def't's counsel. Who received the portion of the purchase-money that has been paid by the plaintiffs for the property, and how much was it?

287 Answer. I received from the plaintiffs twelve thousand five hundred dollars of the purchase-money, which I gave to Dr. Grymes & for which I took his receipt. Of this sum he returned to me twenty-five hundred dollars, ($2,500.00,) one thousand of which was paid to Williams & Williams, who were our local agents in the matter. The residue was divided with my firm. Dr. Grymes had given me a power of attorney to collect the money from the plaintiffs, and I gave them a receipt for it, and took his receipt.

2d question by same. Did you give Dr. Grymes a receipt for the two thousand five hundred dollars retained by you out of the twelve thousand five hundred paid you by the plaintiffs?

Answer. I did not give him a receipt for it at the time. Subsequently, after the difficulty arose, I thought it proper that he should have evidence of the fact that he had paid me the $2,500, & wrote to him to that effect, telling him, as well as I remember, to retain my letter as a receipt.

3d question by same. Did you apply to Dr. Grymes for the
288 agency to sell the property, or did he apply to you to sell it for him?

Answer. I applied to him. I learned that he desired to sell his property. I suggested to him that he would let me take charge of it and endeavor to sell it for him.

4th question by same. What was his reply? Give his language as nearly as you can recollect it.

Answer. I do not recollect his language. I have read his answer, and have no reason to doubt that what he says is correct.

5th question by same. Was anything said about your firm—I mean the firm of Echols, Bell & Catlett—in your arrangement with Dr. Grymes for the sale of the property, or was the arrangement made between you & him personally?

Answer. I do not think I mentioned my firm to him. I had known Dr. Grymes for a long time, & our relations had been of a most affectionate character, and I therefore dealt with him in a different way altogether from my custom of dealing with other parties who
289 placed lands in our hands. I had merely a verbal understanding with him with reference to my agency instead of taking a written contract, as we have done (I believe) in all other cases.

6th question by same. State if you know anything of other offers being made for the purchase of the land about the time of or before its sale to the plaintiffs.

Answer. When I solicited the agency of the property from Dr. Grymes, he told me that several parties had been looking at and enquiring about his property, and I think he stated that he had received an offer for it which he had declined. When I went to Philadelphia after visiting the land with Fisher, feeling that the sale of the property to his principals was uncertain, I made the acquaintance of Mr. Conyham, who I was told had been successful in making sales of mineral lands, and mentioned the property to him, and proposed to him to join me in making a sale of it, to which he consented, and proceeded to call the attention of some parties to it. Before he could or did accomplish anything the sale was made to Messrs. Repplier & Lanigan.

7th question by same. At whose instance was it that Peyton
290 Grymes, jr., carried you and Fisher to the land?

Answer. When it was decided that Mr. Fisher should visit the land I wrote to Peyton Grimes, jr., who is my brother-in law, that we would be at Orange Court-House on a certain day to go to the property, and asked him to provide us some means of making the trip & to accompany us. I did not write to Dr. Grymes to accompany us, because his extreme age, in my opinion, totally unfitted him for the long and hurried ride which we anticipated.

8th question by same. Did Dr. Grymes refer you or Fisher to Peyton Grimes, jr., or to Peyton G. Hume, or to anybody else, to point out the lines of the land, or show you the property, or did he, so far as you were informed, authorise any person to do so?

Answer. I don't think I saw Dr. Grymes on the trip until we returned from the property. Peyton Grymes, jr., was his son, and was attending, as I understood and believe, to his business. Fisher and myself were entire strangers to the property, and needed some one of
291 course to show it to us. I knew of no one who could do it better than Peyton Grymes, jr., and as he was living with his father I took it for granted that he would communicate our proposed visit to him. I don't know that he, Doctor Grymes, authorized any one to show us the property.

9th question by same. Was Peyton Grymes, jr., attending to his father's business generally, or was he merely managing the farm on which he lived, and attending to his business matters as connected with that farm?

Answer. He had charge of the farm, and, so far as I could see, managed his affairs connected with it. I mean the farm on which Dr. Grymes lived. I did not suppose that he had other or greater authority than that. I did not write to Peyton Grymes, jr., because I thought that he had any authority of Dr. Grymes' property or to contract about it, but

because I thought he was thoroughly familiar with the Vancluse property, and could show it to us. I felt that there was no doubt but that Peyton Grymes, jr., went with us with his father's consent & approval; but nothing was said about it one way or the other.

292 10th question by same. What persons did you find at the house on the land at which you & Fisher & Peyton Grymes, jr., stayed all night; and whom did you see while on the place?

Answer. I don't remember the names of any. There were three females and two males (young men) at the house. The females, I think, were members of the family of Dr. Grymes' tenant. I also saw Peyton G. Hume the next morning; but he was not at the house at all.

11th question by same. Was there any conversation in the hearing of yourself and Fisher, at the house the night you stayed there, about the gold-bearing qualities of the land? If so, state what was said, as nearly as you can, and by whom.

Answer. The ladies at the house, inferring that we had come to examine the property, spoke of small peices of gold which they had found on the hill, near the house. They said that they had done this after heavy rains. Not knowing much about the value of such surface indi-

293 cations, I was impressed with the confirmation which their statements afforded of the popular belief of the value of the property as a gold-bearing property. I had always heard that it was an exceedingly rich & valuable property, & that Dr. Grymes had received a large amount of gold from it. I was pleased with the conversation, because I thought it confirmed statements which I had made to Messrs. Lanigan & Fisher in relation to the property.

11th question by same. In your letter marked H, which has been filed with this deposition, you use this language, viz, "I have explained to Mr. Michie that the land was shown to Fisher & myself by young Hume, the grandson of Dr. Grymes, and that he took Fisher to a shaft, or shafted vein, which he said was on Dr. Grymes' land." Is this statement accurate? Did Hume say that the shaft was upon Dr. Grymes' land; or did you merely infer that it was upon the land from the fact that Peyton Grymes, jr., had sent for Hume to show you the property, and that he went with you and Fisher to the shaft after showing you where he was himself then washing for gold?

294 Answer. The language of the letter was not strictly accurate. As I have deposed, I do not remember what transpired at the shaft. The letter was written under the positive conviction that the shaft was on the land when we were carried to see it—a conviction produced upon my mind by the actions or statements of Hume, I don't remember which, as I do not recollect any statement made by him.

13th question by same. Did not Peyton Grymes, jr., propose to you and Fisher to let him send for Mr. Johnson, a neighbour, who, as he said, was familiar with the boundaries of the land, in order that he, Johnson, might point out the lines & show the property to you?

Answer. I remember no such proposition.

14th question by same. When did he send for Hume to come to show you the property; and did you hear the message that he sent to him?

Answer. I think he sent for him the morning we reached the property. I did not hear the message sent.

295 15th question by same. Did you and Fisher, or either of you, go to any other shaft that morning besides the one about which this controvery has arisen?

Answer. I have an uncertain impression that Fisher & Hume went beyond this shaft; how far they went I do not know. I did not go any

further, not dreaming at the time that any controversy would ever arise with reference to the property, with which I could in any way be connected. I did not notice what took place in a way to fix it upon my memory.

16th question by same. Do you not recollect seeing some other shaft or shafts, or hearing something said about getting specimens of ore from another one? If so, state what was said, to the best of your recollection.

Answer. I did not see any other shaft in going to the shaft to which Hume carried us. We passed to the right of a mill-house which had been used for crushing gold-quartz. It is probable there is a shaft near that. There was a shaft beyond the one Hume carried us to, belonging to the Liberty Mining Company, or to Scott & Slaughter, from
296 which Hume was to obtain some of the quartz for Fisher. This arrangement between Hume & Fisher was either made in my presence at the shaft or I was informed of it by Fisher afterwards.

17th question by same. You have stated that you were under the positive conviction, produced by the actions or statements of Hume, that the shaft which is the subject of this controversy was upon the land then owned by Dr. Grymes. Was there anything else said or done by any person from the time you started from Orange Court-House on your trip to the land until after the sale of the land had been consummated, which tended to show that the shaft was upon it or that said land had ever been worked for anything else than surface-gold?

Answer. From the time I visited the shaft with Hume I treated its existence upon the property as a fixed fact, at least in my own mind. While I do not remember that the shaft was specifically alluded to in any conversations which afterwards took place in my presence with reference to the property, I heard nothing from any one to remove
297 the impression from my mind of its being on the land. If anything had been said which could have raised a doubt about it, it would have certainly attracted my attention. On the other hand, I do not recollect to have heard anything said after my visit to the shaft which was calculated to produce the impression on my mind that the shaft was upon the land or that the land had ever been worked otherwise than for surface-gold, so as to lead me to the opinion that the shaft was upon the land, if I had not been carried to it by Hume. It may be as well for me to state here that after I got back to Dr. Grymes' house, where there was a good deal of conversation about the property—I was not present during a portion of the time with Fisher and the family—Mr. Fisher, as agent of the plaintiffs, was seeking all the information he could get, and I did not, therefore, pay the same attention to the conversation when present as he must have done. The reason why I was not present during the whole time was that my sister, Mrs. Peyton Grymes, jr., occupied a dwelling near the doctor's house, and I spent a portion of the time with her.

298 18th question by same. Did you, at the time of your agreement to sell the land for Dr. Grymes, or afterwards, before you were carried to the shaft by Hume, hear anything to lead you to believe that there was any shaft upon the land then owned by Dr. Grymes, or that the land then owned by him had ever been worked otherwise than for surface-gold?

Answer. I don't know that I did.

19th question by same. How long after the purchase of the land was it that Repplier & Lanigan were informed that the shaft was not upon it?

Answer. It must have been in the latter part of June or in the early part of July following the sale.

20th question by same. When did they first announce their purpose to require a rescission of the contract of sale to you or to Dr. Grymes?

Answer. The first announcement I received from the plaintiffs of their purpose to demand a rescision of the contract was in a letter from
299 Mr. Repplier, dated about the 10th of September, 1866, in which he requested me to communicate that purpose to Dr. Grymes, which I did.

21st question by same. Was that after Bowman had made his explorations for gold upon the land?

Answer. I think it was. The explorations were made by Maj. Bowman, I think, in the month of August.

22d question by same. Do you recollect whether Repplier, in that letter, referred to and relied upon the fact that a shaft upon the plat you or Dr. Grymes had furnished him, and which was identified by your indorsement, was marked as being upon the land purchased by them, when, in fact, there was, as they had ascertained, no shaft upon it?

Answer. I believe he did.

23d question by same. Did not Dr. Grymes, as soon as he was told that they complained that there was no shaft upon the land, and ever since, as far as you know, say that he knew very well, and had
300 always known, that there was no shaft upon it; that he had never represented to any one that there was a shaft upon it; or that he had ever worked it otherwise than for surface-gold; and that no person had ever been authorised by him to make any such representations; and that if he had been informed that it was supposed that the shaft in question was upon the land he would at once have corrected the mistake?

Answer. I think that William G. Williams first communicated to Dr. Grymes that the complainants had learned that there was no shaft upon the property. So far as I know, your question covers the statements made by Dr. Grymes, in substance, to me. I could not be made to believe that the shaft was not upon the property until I had from Dr. Grymes these statements or what amounted to them.

24th question by same. Mr. Lanigan, in his deposition, has spoken of an interview between him and Dr. Grymes in your presence some months after the purpose of the plaintiffs to require a rescission of
301 the contract of *the contract of* sale had been announced by them. Will you state whether you recollect being present at that interview, and about what time it took place, and whether Dr. Grymes made any sort of admission that he had made any misrepresentation, or that any was made by his authority or with his knowledge, or that he was bound to rescind the contract of sale?

Answer. I was present at that interview, and think it took place in the spring of 1867. At that interview Mr. Lanigan told Dr. Grymes, in substance, that not having gotten the property from him which they supposed they were buying, that they wanted the money refunded. Dr. Grymes answered, in substance, that he did not have the money, having loaned it out and given a part of it away; in reply to this Mr. Lanigan said that he did not care about the money and would give him any time he desired upon it. Dr. Grymes responded that he would think about it, and write to him or Mr. Repplier. After some conversation about other things they parted. As far as I can recollect
302 this was what took place at that interview. He made no admission that I heard that he made any misrepresentations, or that

any was made by his authority or with his knowledge, or that he was bound to rescind the contract of sale. The doctor's manner was pleasant and so was Lanigan's, and I could but hope it would lead to a settlement between them.

And further this deponent saith not.

R. H. CATLETT.

STATE OF VIRGINIA,
County of Augusta, to wit:

I, William A. Burnett, a notary public for the county aforesaid, in the said State, do hereby certify that the foregoing depositions of James Lanigan, Howell Fisher, and Richard H. Catlett were duly taken, sworn to, and subscribed before me on the 3d, 4th, and 5th days of February, 1870, at the law-office of Messrs. Echols, Bell & Catlett, in the town of Staunton, V'a, to be read as evidence on behalf of the complainants in this cause; that said depositions were taken by consent of parties through their counsel; and that the complainants, Messrs. Rep-
303 plier and Lanigan, were represented by their counsel, Thomas J. Michie, esq'r; and the defendant, Peyton Grymes, by William J. Robertson, esq'r, his counsel, in person. I further certify that the letters marked A, B, C, O, D, E, F, H, are herewith filed as a part of this deposition.

Given under my hand and official seal at Staunton, V'a, this 5th day of February, A. D. 1870, and in the 94th year of the Commonwealth.

[SEAL.] WILLIAM A. BURNETT,
Notary Public.

Time employed in taking this deposition, 24 hours, @ 75, $18.00; certificate, .25; affixing seal, .37; postage, say .50—$19.12, charged to plaintiffs.

Teste: WILLIAM A. BURNETT, *N. P.*

304 A.

S'T LAWRENCE HOTEL, *March 12th*, 1866.

MY DEAR SIR: I received a letter this morning which will authorize me, I think, in closing the sale of the gold-mine without reference to Dr. Grymes. You will therefore consider it closed upon the terms you proposed, and if I can do so, I will get six months instead of four upon the deferred payment. I have seen Mr. Repplier, and he says that whatever was agreed upon between you and Mr. Lanigan will be satisfactory to him. He wants the deed made as soon as possible. They will have no difficulty in selling the property here for double the amount they have agreed to give, and if they will manage it right, they will sell it for a good deal more. Mr. R. wants to have it worked. I shall not be able to go with you to the Kanawha until I get the Chapman matter closed up. I have asked my partners to defer closing with the parties in Washington as long as they can, and this is delaying it. I am so anxious for L. & R. to get an interest in this property that I shall return here at once, unless the sale has been closed, with authority to
305 control the matter exclusively myself. In this event I don't know when I shall be able to go. Write to me at Staunton.

Yours, truly,

R. H. CATLETT.

HOWELL FISHER, ESQ'R.

B.

MERCHANTS' HOTEL,
New York, July 13th, 1866.

DEAR SIR: Your letter has just reached me. I was truly sorry that I did not see you in Phila. I went over to see you. It was so intensely hot I concluded to put off calling until night, and then went up to your house. I found it closed, and one of your neighbors told me that you and your family had left for the summer. I saw Mr. Fisher just as he was starting for Pottsville, on Saturday evening, & he told me you had only gone with your family to your farm in the vicinity of the city.

He told me that you & Mr. L. had visited your Vancluse property, and were told while there, by a Mr. Johnson, that the lines of the Vancluse property did not include the land covered by the doctor's
306 survey. Such a statement would be most astounding if it was true, but I have no hesitation in saying it is perfectly absurd. Dr. Grymes sold off the property to Mr. Smith, now claimed in part by Slaughter & Co., and after the sale was made had his own tract surveyed, and the survey was the one furnished by him to Mr. Fisher and myself. If there is a man living who ought to know the limits and boundary of his own property, Dr. Grymes is that man. I learn that Mr. L. went from Vancluse to Orahge C. H., and I wish, for his and your satisfaction, he had brought the matter at once to the notice of Dr. G. As absurd as the statement is, it should be attended to at once. I should have written to Dr. G. immediately, but for the fact that I have been expecting to go to Albemarle for several days, and I thought I could either see Dr. G. or Mr. Williams as I passed through Orange. I shall leave on Monday for Albemarle, and will have this matter at once attended to. I shall run over to Staunton from there and return north in a short time. The yield of the ore under assay does not surprise me. The Vancluse property has always been regarded as the best gold-property in V'a.

307 I go to Albemarle with a gentleman to look at some property there which he desires to buy. If there is anything else you want me to attend to, please write by return mail. In haste.

Yours, truly,

R. H. CATLETT.

C.

STAUNTON, VIRGINIA, *Sept'r 6th*, 1866.

MY DEAR SIR: As you are aware, the parties in Washington failed to make good their purchase of the 40,000-acre tract of land in Giles & Bland Counties, Virginia. They turned out to be mere men of straw, utterly bankrupt in funds if not in character. We at once put an end to the matter with them, and since that time, being occupied with other matters, we have taken no steps to put it upon the market; in the mean time, these men have obtained a charter for a mining company from the Congress of the United States, with an authorized capital of $3,000,000, for the purpose of purchasing & improving this property.

However feasible such a scheme may be, we do not wish to have
308 anything further to do with such parties. You know the value of this property as given to you in the report of Fisher & in the opinion of Mr. Lanigan, and I write to ask you if you will not co-operate with us in the sale. We will give you the exclusive control of it

for the balance of the time we control it, and we will divide with you whatever we may make. We have a good contract with the owners, which we will forward to you if you will unite with us. If a party of of active capitalists would purchase this land and lease it in alternate sections to a company of industrious emigrants for a limited time, and in the mean time would develop its immense deposits of iron-ore, & bring its timber into market, more money could be made than by any investment in this country. In a short time, too, the coal of the Kanawha & these iron-ores will be brought together, which will greatly enhance the value of this property. Col. Scott, of the P'a Central R. R'd, & Col. A. K. McClure, of P'a, and H. M. Alexander, of New York, will send a geologist to Virginia next week to examine some properties which they propose to sell in co-operation with us, and we could include this tract of land in the list; but if money can be made out of it
309 I would like very much for you to make it. If you should desire it, I should be pleased, of course, for you to unite Mr. Lanigan with you; but I have asked him to unite with us in some other sales, from which I hope he will be well compensated; and I would like for you to feel that the compensation to be derived from co-operating with us in the sale will justify the trouble.

I saw Maj. Bowman in Orange, and requested him to say to you, in the event his investigations at Vaucluse did not prove satisfactory, that I should be ready to co-operate with you fully in effecting your wishes in the matter. An opening, or shaft, was certainly exhibited to Fisher & myself by young Hume, the grandson of Dr. Grymes, as upon the doctor's land. We control the land owned by Slaughter & Scott, & if you desire it, I think by combining the properties you can soon get your money back with a large profit. Suppose we put the properties together and sell them as one upon the joint-stock principle. Root, the son-in-law of Harper, (of the magazine,) and Catherwood desire to unite with us in the sale of all our gold-properties, but I shall withhold this one until I learn your wishes. I think by combination we
310 can realize something very handsome from them. Please write to me at once.

Yours, truly,

R. H. CATLETT.

GEORGE S. REPPLIER, ESQ'R,
329 *Walnut street, Phil'a.*

My partners, Gen. Echols & Maj. Bell, especially desire the arrangement I have proposed to you with reference to the 40,000-acre tract.

R. H. C.

D.

STAUNTON, VIRGINIA, *October 25th*, 1866.

MY DEAR SIR: Your favor of the 22d has been received. Maj. Bell returned some days ago, and we immediately wrote to the owners of the Giles land about it, as their desire to withdraw it came from the belief, I think, mainly that no sale could be made; they may agree to give the time required. I do hope we may turn something to account that will compensate you for the trouble, annoyance, and expense which you have encountered in Virginia. I can't help from feeling sorry that you didn't go into the rolling-mill scheme in Lynchburg, but I have
311 no doubt you had good reasons for not doing so.

I am going to-morrow to West Virginia; as soon as I return I

will meet you and Mr. R. at any time at Orange C.-H. The course which Dr. Grymes has taken has evidently been taken, I think, under the influence of others. I sincerely trust that he may arrange the matter without a suit, as a suit in chancery in Virginia can be made almost interminable if lawyers desire to make it so. Dr. Grymes' letter to Mr. Repplier greatly surprises me; but I will not comment on it.

A wealthy banking-house in Baltimore is anxious to take hold of Slaughter & Scott's property, and if they will make sale of it in connection with the Vancluse, I will let them sell it. There is an unusual degree of interest manifested in gold-properties. The parties who bought recently near T'd'b'g inform me that that they are going at once to work with the expectation of making it immensely profitable. They say their ore will yield from $18 to $40 per ton, and that they can extract the gold for a cost not over $7 per ton. They say if they
312 succeed they intend to invest at once largely in Virginia gold *gold* property, and have written to ask me to reserve Slaughter's until their trial is made. I expect the best way to settle the matter between you and Dr. G. is for me to sell the property you bought from him, which I believe can be easily done. What of the soapstone?

Yours, truly,

R. H. CATLETT.

JAMES LANIGAN, ESQ'R,
Pottsville, Va.

O.

STAUNTON, VIRGINIA, *Sept'r 24th*, 1866.

MY DEAR SIR: I have just returned to Staunton, and find a letter from Mr. Repplier requesting me to inform Dr. Grymes that he should throw up his contract for the purchase of Vancluse, and directs me to demand the return of the money. There is no doubt about the fact that the shaft to which Mr. R. refers, was pointed out to you & I by young Hume, as upon Dr. Grymes' land, and under such a mistake there can be no doubt in my opinion about his right to have the
313 contract rescinded. The only difficulty about it is the speedy recovery of the purchase-money paid. Dr. Grymes, not dreaming of any trouble, loaned out most of the money upon long time upon simple interest, and used the remainder to meet pressing obligations upon him.

In view of these facts I have suggested to Mr. R. that by combining the property with Slaughter & Scott's, which we control, and which can be sold for $15,000, we would have little difficulty in getting for the 600 acres from $45,000 to $50,000. Will you not unite in doing this so as at once to recover the money Messrs. R. & L. have paid out, meet the expenses they have incurred, and compensate them for the time they have lost?

I feel very deeply this unfortunate mistake. I am anxious for this also, on Dr. Gryme's account, who is old & feeble, and who will be worried by this trouble.

I am sure we can easily make a sale of the two properties together so as to get back the money at once.

Please see Mr. Lanigan at once and have a full talk with him, & get him to see or correspond with Mr. Repplier. Write to me by return mail.

Yours, truly,

R. H. CATLETT.

HOWELL FISHER, Esqr., *Pottsville, Pa.*

314 E.

STAUNTON, VIRGINIA, *Dec. 21st*, 1866.

MY DEAR SIR: Your favour of the 12th did not reach me until the 18th inst.

I am glad that Mr. Deher has not given up the zinc property. Zinc is more in demand than any other mineral in the country, and I think we ought to make something out of this chance. Write to me before Mr. Deher leaves, and let me know at what price you hold the property, and the relation Mr. Dreher occupies towards it; whether he is an agent to sell or a person wishing to purchase. This is important in order that Mr. Caldwell, our agent, may co-operate fully with us or him.

The Chapman tract has been withdrawn from market. As Maj. Bell informed your friend in Philadelphia, our control of it expired on the 15th ulto., and Gen. Chapman withdrew it from market upon the grounds, as he said, that he had discovered "immense deposits" of other minerals besides iron upon it, but really that he might make
315 new arrangements with the parties who obtained from Congress last winter a charter for a mining company in Virginia. These parties are the bogus men who interfered with our operations with regard to it last winter.

The tract of coal-land on Elk is certainly one of the cheapest in the country. We control it at $2 per acre, which gives a larger margin of profit than any property that I know. Its location on Elk River, in West Va., with a river front of 20 miles, with coal-veins opened all along the river, of the finest coal, with perfect title, with fine timber, & in a State whose political status is fixed, make it a great enterprise, and the best investment of the kind that I know anything about. If you desire it, I can send you a description with a map of the property.

I received a letter from Orange a few days ago, which induces me to hope that Dr. G. will adjust the Vaucluse matter before long in a way that will be satisfactory to you. I hope this may be so, as it is the only business transaction with which I have ever been engaged which gives me personal regret. I am prepared to meet you in Orange
316 at any time; but I think if we give the doctor a little more time he will work out the matter himself, and we shall have nothing to do but close the arrangement. If we press him he may not so readily comply.

I have not yet been able to return the money which you and Mr. R. so kindly loaned me. If I can't do so before long, I shall insist upon giving a lien upon a portion of my property in Richmond. I shall do this not to obtain delay, but simply to make secure what you and Mr. R. have so kindly loaned me. If the Cov. & Ohio R. R. is made, my property in Richmond will be of great value to me, and I should dislike to sacrifice it by forcing a sale unless you desired it.

I sent you a brief sketch of my iron scheme. What think you of it? Large investments in Virginia may be delayed a little while, but they are bound to come, and we must be prepared for them.

Yours, truly,

R. H. CATLETT.

JAMES LANIGAN, Esqr., *Pottsville, Pa.*

317 F.

STAUNTON, VA., *April 26th*, 1867.

MY DEAR SIR: Your kind favor of the 21st inst. has been received. I cannot tell until about Tuesday next what day I can meet you in Orange, on account of some business I am endeavouring to arrange in connection with an estate in Richmond, and which may compel me to go there within the next week. I hope to receive a letter before Tuesday in regard to it.

I shall go to Orange a day or two before you get there, in order to have a full & thorough talk with Dr. Grymes. If I can get him to consult any intelligent lawyer for five minutes we will have no trouble in closing up the matter. The legal questions involved in the case are so plain & simple that a child can understand them, and I do trust that Dr. Grymes will not, at his advanced age, subject himself to the worry and annoyance of a suit when he can get the matter settled up without trouble, and upon the indulgent terms proposed by Mr. Repplier. I will write Tuesday or Wednesday next.

Yours, truly,

R. H. CATLETT.

JAMES LANIGAN, Esqr., *Pottsville. Pa.*

318 H.

STAUNTON, VA., *Sept'r 21st*, 1867.

MY DEAR SIR: I am much obliged to you for the information you have given me in relation to the Anspaugh claim. The opinion of Mr. Hughes corresponds with the opinion entertained here with regard to it. I shall take your advice, and not make an offer to Mr. Anspaugh if the parties now negotiating for the purchase of the property are satisfied. If it should be otherwise, I will avail myself of your kindness and get you to make the offer for me.

I have had two free & full conversations with Mr. Michie since you were here in relation to the Grymes matter, and have explained it to him as it is understood by you, and in accordance, so far as I know, with all the facts in the case. Dr. Grymes has acted throughout with the same spirit of uncertainty that marked his interview with us when we were in Orange. I have explained to Mr. Michie that the land was

319 shown to Fisher and myself by young Hume, the grandson of Dr. Grymes, and that he took Fisher to a shaft or shafted vein, which he said was on Dr. Gryme's land, and that the land was bought by you under the impression & belief that the shaft was on it, &c., &c.

I think Mr. Michie ought to see Fisher and talk with him, that he may confirm what I have said. This matter has troubled me more than any transaction of my life, and I trust has taught me a degree of care and caution that will not be forgotten in my future transactions.

You can imagine how you would feel if you had been, however innocently, the cause of involving others in such a matter. The only comfort I have is in the assurance from you that you have never misunderstood my connection and part in the matter. I trust yet that it may work out right.

Echols has received your letter, and seems sorry that you didn't have time to make something out of the coal and iron land controlled by him and Mr. Caperton. The land is wonderfully low in price, which is

not greater than its agricultural value, leaving entirely out of
320 view its rare combination of coal and iron and its admirable location for easy shipment to market. This property and the plaster banks are the only two schemes in which Echols expresses any interest or has much faith. He feels that you have shown a disposition always to be liberal to us, and I know that he was really concerned that you should secure what he conceives is a great chance for making money. If he hadn't thought it was something out of the ordinary line he wouldn't have troubled you by calling it to your attention; for he knows you have no time for little projects, and he has no fancy for them himself. Echols has, personally, but little interest in it. Caperton is the man who really controls it. If you see any chance of doing anything with this land write to Echols. From what we can learn we are satisfied that 25,000 tons of plaster, and perhaps more, are now used in this valley alone, all of which we must supply in a few years, while the West and South are now open to us. I sincerely believe that five years hence this lease will be worth more to you than your splendid farm will be.

I am satisfied that our plaster-lease is destined to be the biggest thing in this country. Fifty years of time, with the best beds of plaster in America, on a railroad and above water-level, with almost a monopoly of the cheapest of fertilizers, with a growing demand, and at any price we may choose to fix, will make this, in my judgement, a lease of immense value. The thing now to be done is to make the necessary railroad arrangement.

Yours, truly,

R. H. CATLETT.

JAMES LANIGAN, Esq'r',
Pottsville, Pa.

321 (Endorsed:)

The defendant, Peyton Grymes, by his counsel, excepts to that part of the deposition of R. H. Catlett, of which the letters of said Catlett are made part, none of the said letters being admissible in evidence.

PEYTON GRYMES,
By Counsel.

MARCH 14TH, '71.

322 The depositions of Albert H. Smart, Thomas C. Gordon, William G. Williams, Lewis B. Williams, and Peyton G. Hume, taken in the counting-room of the drug-store of Mess. Taliaferro & Row, at Orange Court-House, Va., on the 29th, 30th, and thirty-first days of March, 1870, by consent of parties, to be used as evidence in behalf of Peyton Grymes, in the chancery suit pending in the circuit court of the United States, of the district of V'a, holden at Richmond, Va., in which George S. Repplier & James Lanigan, citizens of the State of Pennsylvania, as plaintiffs, and said Peyton Grymes, a citizen of the State of Va., is a defendant, said depositions being taken before the unde'signed, William R. Taleaferro, a notary public for the county of Orange, State of Va., William I. Robertson, counsel for the defendant, Grymes, and Thomas J. Michie, counsel for the plaintiffs Repplier and Lanigan, being present.

The witness, ALBERT H. SMART, having been first duly sworn, deposes and says in answer to questions as follows:

1st question by counsel for defendant Grymes. Please state your name, age, residence, and occupation.

323 Answer. Albert H. Smart is my name. I am twenty-seven years of age. I reside in the county of Spot'sylvania, Va., where I am engaged in farming. I am also farming & mining in the county of Orange. My chief occupation is that of a miner on the Greenwood gold-mine, in the county of Orange, which is not more than one-half a mile from my residence in Spot'sylvania.

2d question by same. How far is the Greenwood gold-mine, where you are engaged in mining, from the land in controversy in this suit?

Answer. About three hundred and sixty-five yards.

3d question by same. How long have you been engaged in mining at the Greenwood gold-mine, and what has been your success in your operations there?

Answer. My father and I bought the Greenwood mine something more than two years ago, I think. I do not recollect the exact
324 date. We sold shares in the property to other persons who joined us as partners, & we then went on to develope it, commencing to sink a shaft upon it about eighteen months ago, having previously worked the surface for gold. The surface-working has been continued from the time we first commenced it down to the present, and has all the while, as it still does, paid us a profit. We find indications of gold all the way down the shaft, and when we got to the depth of forty-five feet, we struck a very rich vein. Our operations were suspended after striking this vein for some four or five months, for causes which it is unnecessary to mention, and then resumed, when I put up a Chilian mill & went to work—this was about two weeks before last Christmas. I took out twelve hundred pennyweights of gold in two weeks, which were worth in gold coin one dollar a pennyweight. Our expenses in those two weeks were not over eighty dollars in currency. About two weeks after Xmas we commenced work again, and have been working ever since with success. We have now sunk the shaft to a depth of seventy-five feet, with prospects growing better all the
325 time, and I am satisfied that the mine will prove extremely valuable; it has, indeed, already done so. I have taken out gold enough to more than pay expenses so far, which is an unusual thing for a shaft so recently opened. I could have made a still greater profit than I have made had I confined my work to the vein already struck; but being satisfied that there is a still richer vein below, or at least a larger one, I have been sinking for that.

When we bought the property two years ago we gave only thirty-two hundred dollars, and have since declined an offer of fifty thousand dollars for it. There is no one of the share-holders who does not consider the property worth at the present time at least one hundred thousand dollars.

4th question by same. Please state what experience you have had as a miner for gold.

Answer. I have been engaged as a practical gold-miner for eleven years, seven of which were spent in Colorado. I have also been engaged in mining in Vermont and New Hampshire. I was superintend-
326 ant of the Millville gold-mine in Va., not far from the Greenwood mine, where I now am, for about eighteen months.

5th question by same. How is the land which is in controversy in this suit situated relatively to the Melville & Greenwood gold-mines?

Answer. It lies between the two.

6th question by same. How do the veins of gold, which have been developed on the Melville and Greenwood property, run?

Answer. Northeast and southwest.

7th question by same. How do they run, relatively to the land in controversy in this suit; and are the veins on the Greenwood property a continuation of those on the Melville property or not?

Answer. The veins that have been opened on the Melville property do not, I think, pass through the land in controversy. Those on the Greenwood property, where I am now working, unquestionably do. They pass through it, and strike the Melville property farther south
327 than the veins which have been opened upon it are situated; these veins run parallel to each other, & are also parallel to the veins of the Vancluse property, which, as I have heard, was first sold off by the defendant, Grymes, and those in the Scott and Slaughter property adjoining the Vancluse, and which, as I have heard, was afterwards sold off by said Grymes. The Vancluse and the Scott & Slaughter property lie a little north of west of the land now in controversy. The veins on them pass through the Melville property where it has been developed. The Greenwood vein, on which I am now working, lies south & east of the vein just referred to; and it, as I have stated, passes through the land in controversy in this suit and on to the Melville property, though it has not been developed on either of them; but I know from my experience in such matters that it must undoubtedly pass through them both. I should judge that it would pass about two two hundred or perhaps two hundred and fifty yards southeast of the dwelling-house of the land in controversy. William Embry, who is quite an experienced miner, and who is my foreman, and is well
328 acquainted with the mines in that part of the country, having worked on them some thirty-five or forty years, I suppose, thinks that the veins that we are working on upon the Greenwood property, would pass a good deal nearer to the dwelling-house of the land in controversy than I have stated that I suppose it does.

8th question by same. What are the indications of gold on the land in controversy in this suit?

Answer. I have gotten good pan-washing there, and the indications are such, both for surface and vein gold, that I would be very glad to get a lien of the property to work it for either or both. I am satisfied that it is a good gold-bearing property, and if the times were different, I think I would have no difficulty in selling it for more than the plaintiffs agreed to give for it, if, as I have heard, the amount agreed to be paid by them was only twenty-five thousand dollars. I am sure that it needs only a little development to show that it is very valuable gold-bearing property.

(The plaintiffs, by counsel, except to the answer of the latter
329 clause of the seventh question, in giving the opinion of another person than the witness.)

Cross-examined by plaintiffs' counsel:

1st question by counsel for plaintiffs. How far have you developed the vein on your land (the Greenwood land) that you have testified as to the richness of, that is to say, at how many points of that vein, and at what distance are those points on the vein?

Answer. I have only sunk one shaft on the vein itself. I have made other explorations, but not on that vein, but on the surface. I am getting surface-gold now within fifty yards of the line of the land in con-

troversy in this suit; this is not directly on the line of the vein but farther east.

2nd question by same. How far on the line of that vein does the shaft you speak of develope the existance of gold?

Answer. I have sank only one shaft, eight by ten feet large and seventy-five feet deep, but I have drifted on the *the* vein about
330 sixty-five feet, that is to say, I have taken out about sixty-five feet in length of the vein. I have not followed it farther because I am striking for the main vein below. It would require experience as a miner to answer more questions fully as to the extent that the explorations I have made develope the vein. I am satisfied from the workings that were made on the property before I bought it, some one hundred and fifty yards south of my present shaft, (which workings extended some hundred yards on the vein,) that there is gold in the vein between these workings and my shaft, and I am satisfied that the vein extends farther north than my shaft, not only from my experience as an underground miner, but also from the gold and the surface indications along the line of the vein.

3d question by same. What workings do you speak of one hundred and fifty yards south of your shaft, and, whatever they were, can they be on that same vein which you say runs northeast and southwest?

Answer. The workings that I speak of were done by Hawkins and others who worked the property before we bought it; on speaking
331 of them as being south of the shaft I did not mean that they were due south, but in a southerly direction. The veins run northeast and southwest, but in that short distance their western inclination would make but little differance, though in crossing the whole county it would make a considerable differance. In speaking of shafts on the same vein, in the immediate neighborhood of each other, we speak of them as being north & south, instead of northeast & southwest, the differance being so slight. There is no doubt whatever that the workings I speak of and my shaft are on the same vein. The workings I speak of were underground workings on the vein. There were five or six different shafts.

4th questions by same. What was the fate of Hawkins and others? Did they make fortunes at the business? Were they the persons who sold to you at thirty-two hundred dollars?

Answer. Hawkins died before I came to Virginia. As near as I can come to it, Hawkins and others took out as much as one hundred
332 and eighty thousand dollars in gold from their workings on this vein. I have heard that Hawkins alone cleared one hundred dollars a day for over two years, from his workings, over expenses. I did not buy from Hawkins, but from John M. Herndon, who, as I understand, had a clear title (I don't know how acquired) except in the contingency of the birth of an heir to one of three old ladies. From what I heard as to their age I didn't think that an heir would be born, and bought the property.

5th question by same. Can you say, from your experience, where that vein that you speak of begins, or where it ends, or sinks away out of reach? Can any man decide such a question?

Answer. I can't, and I don't think any man can. Our scientific men say that there is a gold-belt, which extends from Florida, through Georgia, and on to Nova Scotia; but where a vein dips or rises no man can tell with certainty except by working. We can tell to a certain
333 extent by the gold and surface indications whether the vein is near the surface. The belt I speak of is from eight to twenty

miles wide, and has been worked on in hundreds of different places, from one extremity of the continent to the other.

6th question by same. Is not gold like many other minerals frequently deposited in the earth, in what are called pockets, more or less extensive, and are they not frequently found—frequently in that belt which scientific men speak of?

Answer. All veins in all countries are pocketed; that is to say, they are much richer in some places than others. We frequently come to swells, or rich places in a vein, which are called pockets or chimneys, but they do not diminish the gold-bearing p'operty of a regular vein. I never heard of a pocket except in a vein, or at least in the gold-belt.

334 7th question by same. How do you derive your information of the quantity of gold made from that vein by Hawkins and others, since you say Hawkins was dead before you came to this county?

Answer. By information derived from citizens in the neighborhood, and by investigations, or rather inquir'es, made by myself in the neighborhood before I bought the property, and from what Mr. Embry told me, who was Hawkins' foreman. As I understood, Hawkins first leased the property and made enough money out of it to buy it, and then made enough to have a handsome brick residence built by himself and money in bank at the time of his death, though he was engaged in no other business than mining on this property, and was worth, as I have heard, nothing when he commenced; and further this deponent sayeth not.

A. H. SMART.

The further taking of these depositions is adjourned until to-morrow morning at nine o'clock.

W. R. TALIAFERRO, *N. P.*

335 WEDNESDAY, *March 30th*, 1870.—Examination of witnesses resumed at the same place, the same counsel as on yesterday being present.

Another witness, THOMAS C. GORDON, after having been first duly sworn, deposes and says in answer to questions as follows:

1st question by counsel for defendant, Grymes. Please state your name, age, residence, and occupation.

Answer. Thomas C. Gordon is my name. I am thirty-one years of age. I reside in Orange County, Va., and am engaged in farming.

2d question by same. Were you present on the land in controversy in this suit, in February or March, 1866, when it was visited by Fisher, Catlett, and Peyton Grymes, jr., previously to its purchase by the plaintiffs? If you were, please state whether you saw the parties above named while they were on the place, and anything that may have passed between them in your presence or hearing relative to the proposed sale of the land, or its qualities as gold-bearing property?

336 Answer. I was present on the land in controversy at the time referred to, being at the house of my father-in-law, Col. C. B. Bullard, who was then living on the land. I saw the parties named in the question, but had no conversation with them, and heard none in their presence in reference to the proposed sale of the land or its gold-bearing properties. They got there late in the evening and left early next morning. I was about the house all the time and did not go out upon the land at all with them.

3d question by same. Were you, at any time after the purchase of

the land by the plaintiffs, put in charge of it? If so, when, and by whom?

Answer. On the 21st day of July, 1866, I was put in possession of the land referred to by P. G. Hume, acting as agent for Mess. Repplier and Lanigan, as will appear from a paper which I now file with my deposition, signed by P. G. Hume, and dated Vancluse, Va., July 21st, 1866 it being written upon the back of a note written from W'm G. Wil-
337 liams to said Hume, under the authority of which P. G. Hume had taken possession of the land as agent for Repplier and Lanigan, on the 13th day of April, 1866, as appears by his endorsement thereon. The said paper is now marked A.

4th question by same. The land in question seems to be designated in said paper as "Vancluse." Please state whether there is any other property in that neighborhood bearing the same name; &, if so, what it is, and explain how both bear the name of "Vancluse."

Answer. The land in question is called Vancluse, and there is a mine adjoining it called Vancluse mine. The way in which they both come to have the same name is that the whole of the original tract of land owned by Dr. Grymes was called Vancluse. He sold off a portion of it, on which the Vancluse mine is situated, and he afterwards sold another portion. The land retained by him, however, continued to be called Vancluse, or the Vancluse farm, even after the mine on the part that had been sold by him was known by the name of Vancluse, or the Vancluse mine.

338 5th question by same. How long did you remain in possession of the land in controversy in this suit as the agent of the plaintiffs, & did they ever recognize you as such agent by correspondence or otherwise? If so, file any letters or papers that may be in your possession relative to the matter, and state the contents of any you may have received and lost.

Answer. I went there, as I have stated, on the 21st of July, 1866, and remained on the place until November, 1867, but I did not consider that I was acting as agent of the plaintiffs after I received a letter from one of them, (Geo. S. Repplier,) dated Philadelphia, October 20th, 1866, which I file herewith, marked 3. On receiving this letter I came up to see Dr. Grymes, to know what I should do, and told him what Repplier had written to me. Dr. Grymes said he had no instructions to give me; that he had sold the place, and it did not belong to him, and that he would have nothing to do with it. I was at the time living, with my family, in the dwelling-house on the farm, and remained there, as I have stated, until November, 1867, keeping possession of the
339 dwelling-house, yard, and garden, but taking no authority whatever over the rest of the place. I have not occupied the dwelling, nor have I had anything to do with the place, since November, 1867. When Peyton G. Hume put me in possession of the land in July, 1866, he told me that he had written to the plaintiffs, and that they were satisfied with the arrangement. The first that I heard from the plaintiffs themselves, after I took possession of the land, was by a letter written to me by George S. Repplier, (for self & James Lanigan,) dated Nom. 329 Walnut street, Philadelphia, August 24th, 1866, which was handed to me by W'm Henry Bowman, the person named in said letter. I file herewith said letter, marked C. as part of this deposition. Mr. Bowman handed it to me about the 26th or 27th of August, 1866, though I cannot now be positive as to the exact day. Bowman remained at my house some ten days or thereabouts, boarding with me, while he was engaged in making explorations on the land for gold. Soon after his return

to Philadelphia, I received from him (Bowman) a letter, dated Philadelphia, Sept. 7th, 1866, which I file herewith as a part of this deposi-
340 tion, marked D. The check for twenty-two dollars and fifty cents mentioned in said letter was enclosed in it, and I acknowledged the receipt of it as requested, paying over to Saunders and Smith the amount they were entitled to out of it. The amount due to them and to me, as mentioned in the letter, and for which the check was sent, was for work done by us in aiding Bowman in making the explorations for gold on the land. When he got through with the explorations and was about to leave, he paid most that was due the hands, but did not have money enough to pay all, and sent this check for the balance remaining due.

When Bowman was leaving, after making the explorations referred to, he told me to remain in possession of the land as I had been doing, and take care of the place so as to keep it from being trespassed upon or injured in any way until I received written instructions from him or from Repplier and Lanigan, which they would send as soon as he got back to Philadelphia and they determined what course they would persue with the property; that he did not know whether they would go on to make further explorations for gold or would put the property on the market for sale, but that as soon as they determined what
341 they would do with the property I should be furnished with the instructions. After I had been left in possession of the property in this manner by Bowman, I found that there were persons in the neighborhood who seemed disposed to allow their stock to trespass upon it, and thinking that they might possibly question my authority to prevent trespasses, and wanting also to know, in connexion with my own operations on the place, and the length of time it was probable they would wish me to *to* remain there, what course the plaintiffs intended to persue with refer*a*nce to the property, I wrote to Bowman, asking him to send me the letter of instruction he had promised. To this letter I received a letter from Bowman in reply. I cannot say positively whether the letter I then received from him is the one which I now produce, dated 329 Walnut street, Philadelphia, Sept. 24th, 1866, and filed herewith as a part of my deposition, marked E, or whether it was another letter which I received from him in the interval between his leaving the place in the early part of Sept., 1866, and the receipt by me of the letter from George S. Repplier, dated October 20th, 1866, which has been filed with this deposition, and is marked B. I know that I did receive one
342 other letter from him (Bowman) in that interval besides the one I have filed herewith marked E, but I cannot say positively whether I received it before or after I received the letter marked E. I have made diligent search amongst my papers for the letter referred to, but have not been able to find it, and suppose it must have been lost or destroyed in some way unknown me. The letter' which I have filed with this deposition are all that I have received from Repplier and Lanigan, or Bowman, or any other person writing on their behalf, with the exception of the letter above referred to, which, as I have stated, I cannot find. I remember, however, distinctly the contents of this lost letter, that is to say, the substance of it, for of course I cannot undertake to give its exact words. It was to the effect that the plaintiffs were not then prepared to give me any further instructions than those he (Bowman) had given me verbally on leaving the place, because they had not determined whether they would make farther explorations for gold, or would put the place on the market for sale. Not receiving the instructions from Bowman or from the plaintiffs in answer to the letters I wrote

343 to Bowman, for I wrote to him twice, and being anxious to know what course they intended to pursue with the property, and whether they wanted me to remain there for any length of time, so that I might make my own arrangements accordingly, I wrote to Repplier himself, about the middle of October, 1866, making inquiry as to the course they intended to persue, & what they wished me to do. To this letter I received from Repplier the reply dated Phila., Oct. 20th, 1866, which I have filed with this depositions, marked B.

6th question by same. Who came with Bowman when he handed you the letter signed George S. Repplier, for self and James Lanigan, which has been filed with your deposition and is marked C; and how long did he remain with him on the premises?

Answer. Mr. Peyton G. Hume came with him, and remained with him all the time he was there; they stayed in the same room at my house.

7th by same. You have said in your answer to my fifth question
344 that when Bowman got through with his explorations, and was about to leave, he paid most that was due the hands; but did not have money enough to pay all, and sent you the check for the balance remaining due. Did Bowman before leaving the premises pay Peyton G. Hume for his services connected with the working of the explorations for gold?

Answer. I know nothing of his settlements with Peyton G. Hume, or when he paid him. In saying that, when he was about to leave, Bowman paid most what was due the hands, and sent me the check for the balance, I referred to what was due the labouring hands, and not to what may have been due Mr. Hume, who came there and remained with him to aid him with his advice in making the explorations; at least I supposed so.

8th question by same. Was the check enclosed in Bowman's letter to you, under date of Sept. 7th, 1866, and marked D, drawn by Bowman, or by Repplier, or by Repplier and Lanigan?

345 Answer. I think it was drawn by Repplier, though I am not positive in saying that it was drawn by Repplier; I mean J. G. and G. S. Repplier, who constituted a firm of which G. S. Repplier was a member.

9th question by same. What was the character of the explorations made by Maj'r Bowman for gold on the land in controversy? How long was he there; what did do, and were they full and complete explorations, or otherwise?

Answer. He was there about ten days. I don't recollect exactly how long. He commenced making his explorations near the grave-yard, where he made several cuts; some of these were so near each other that they were brought together, making in all three cuts only near the grave-yard. I can't say exactly how large these cuts were, but according to the best of my recollection none of them were more than four feet wide, ten or eleven feet in length, and nine or ten feet deep; this may be an overestimate. From the grave-yard he went south some two hundred yards, it may have been more or less, when he made a cut about four feet wide, probably some twelve feet in
346 length, and possibly some fourteen or fifteen feet deep. About one hundred yards still farther south he commenced another cut, but did not go over two or three feet in the ground, if as much as that. These are all the explorations that I know of his making, though I heard that he sent one or two hands to open some old cuts on the land in the direction of the Greenwood property; what,

if anything, was done there I do not know. From the time that the hands were gone, it must have been very trifling.

He only sent two hands there a part of two days. In the whole time that he was on the land he employed some six or seven different hands, but he never had them all at work at the same time. The largest number he ever had working at one time was when he commenced at the grave-yard, when he had five, but very soon the number was reduced, so that I think the average number working at the same time while he was there was not more than three or, at the utmost, four. I have not much experience in such matters, but it did not seem to me that the explorations made by him were at all sufficient to develope the property, however rich it may have been in gold. The cuts at the grave-yard gave some indications of gold, but they were not considered by M'rs.
347 Johnson and Embry, two old & experienced miners, as favorable as those in the cut made about two hundred yards, more or less, further south. They both thought that the indications there were extremely favorable, and urged him to continue his explorations at that point. Mr. Embry, particularly, urged him to cut deeper, assuring him that if he did he would find gold; that he had never seen quartz like that in that part of the country when gold was not to be found, and he would be sure to find it before long by following up that vein of quartz. All persons present who knew anything about such matters (Johnson, Embry, Hume, & Saunders) agreed in the opinion that the developements were more and more favorable the farther they went into the vein, and urged him to go further into it, but, from some cause or other, I don't know what, he suddenly stopped working, and left the premises, saying, as I have stated, when he left, that he did not know whether they would make further explorations for gold or put the property on the market for sale. I have always thought that if he had made sufficient and proper explorations he would have found a vein of gold. The indications on the land are certainly very favorable, a great deal
348 of surface-gold having been found there, and being still to be found, and the Greenwood vein, which in former years was worked very profitably, and upon which a shaft, recently opened by Smart and others, proves to be extremely rich, passing, as I am certain, through this land. I do not think I can possibly be mistaken in thinking that this Greenwood vein passes through the land in controversy, and that it passes not more than some two hundred yards from the dwelling-house, its range being nearly through the centre of the farm and running northeast and southwest.

10th question by same. Did Bowman, while he was on the premises, or at any time, in your hearing, say anything about his disappointment, or that of the plaintiffs, in finding that a shaft which, at the time of the purchase, they had supposed to be on the land, was not, in fact, upon it, but was upon the land which had been previously sold off by Dr. Grymes, or did he say anything about rescinding the contract of purchase for that or for any other cause? State all that you may have heard from him as to these matters.

349 Answer. I did not hear him say a word about the shafts, and I did not hear him say anything from which I inferred that he or the plaintiffs were dissatisfied with the contract of purchase, or had any idea of rescinding it for any cause whatever. On the contrary, he always spoke of the property as theirs, (the plaintiffs,) saying that he was not sure whether they would work it themselves or would sell it. He said this frequently, and he said, further, that if the plaintiffs concluded to work the property themselves he would come back and man-

age it for them as their superintendent; but he said that he did not know whether they would themselves develope the property with the view of working it themselves, or whether they would sell it. He said that the plaintiffs were wealthy men, large capitalists, and that they had bought the property on a speculation.

11th question by same. Has the land in question been damaged or lessened in value since the sale of it by the defendant, Grymes, to the plaintiffs? If so, say in manner and to what extent. State, also, what opportunities you had of knowing its condition.

350 Answer. I have had very poor opportunities to know what damage has been done to the property since I left it in Nov., 1867; from that time until the 1st Jan., 1870, I was living in the county of Stafford, some twenty-five miles distant from the place. Since the 1st of Jan., 1870, I have been living where I now am, some four miles distant from the property; but I have been upon the place only once; then riding through without dismounting from my horse. I could see that the land had been damaged by the parties who were at the Vancluse mine hauling through. They have made one road that had never been made before, and used one road that had been used as a farm-road before. I noticed that a very valuable hickory-tree near the house had been cut down and removed; if it had been my property I would not have had that tree cut down for one hundred dollars. The place, too, looked generally neglected and dilapidated, and I do not think that it would now sell for anything like as much for farming purposes merely as it would have b'ought at the time it was sold by the defendant to the plaintiffs.

The only part of the farm that does not look in a much worse condition than it was when it was sold by the defendant to the
351 plaintiffs is a house upon the land and some four or five acres of land adjoining it, now occupied by a man named Jennings. He has repaired the house and improved the land immediately around it, having enclosed probably some four or five acres.

(The plaintiffs, by counsel, except to the foregoing depositions of the witness Thomas C. Gordon so far as it testifies to the actings and doings, and writings and sayings, of other persons than the plaintiffs not in presence of the pl'tfs, or not proven to be with their knowledge and consent; and they especially except to the writings and sayings of the witness Bowman, except so far as they may be intended to impeach him as a witness; and without waiving said exceptions, counsel for the plaintiffs cross-examin' the witness as follows:)

1st question by counsel for plaintiffs. Will you please describe, more accurately than you have done, the course of the gold-veins in the section of country where the land in controversy lies, and through that land, by designating as nearly as you can how many degrees east of north and west of south they run?

352 Answer. I cannot answer the question accurately, because I have no experience in or knowledge of such matters. I have always understood that the general directions of the veins in that neighborhood was northeast and southwest; but how many degrees east of north or west of south it is impossible for me to say, as it is a matter that I have never given any attention to. My notion has been that they ran about forty-five degrees east of north and west of south; but it is a mere notion, in the correctness of which I have very little confidence. And further this deponent sayeth not.

THO'S C. GORDON.

Another witness, WILLIAM G. WILLIAMS, after having been first duly sworn, deposes and says in answer to questions, as follows:

1st question by counsel for defendant Grymes. Will you look at the paper now shown you, which has been filed with the depositions of Thomas C. Gordon, marked A, some of the writing on which is signed "W'm G. Williams," and state how much, if any part, of said paper is in your handwriting, and all that you may recollect about it?

(The plaintiffs, by counsel, except, as they have heretofore done, to the introduction of the papers referred by question to witness and to the question itself as relating to that paper.)

353 Answer. All of the paper commencing "Orange C. H., Va., Ap'l 12st, 1866," "Dear Pate," "Dick Catlett requested me," &c., down to "Yours, truly, W'm G. Williams," inclusive, is in my handwriting. I am satisfied that this letter was written by me to Peyton G. Hume, and that it was so written, as is therein stated, at the request of Richard H. Catlett, and that what is stated therein is true, according to the information received by me from Catlett at the time. I do not recollect the contents of the paper drawn by me and sent with this letter, to be signed by Peyton G. Hume, and of course cannot say whether what is endorsed on it, marked "copy," and signed "Peyton G. Hume, Orange Co., Va., Ap'l 13th, 1866," is an exact copy of what I sent him or not, but I have no reason to doubt that it is, for I must have written him something of the sort.

2d question by the same. In your depositions formerly given in this cause you stated that by an arrangement made between Catlett and yourself you were to share a portion of the commissions which he (or rather the firm of Echols, Bell and Catlett, of which he was a

354 member) might make on any land-sales effected in the county of Orange, and that you did receive a portion of what was made by Catlett in the sale from the defendant to the plaintiffs in this case. Will you state whether any other person than yourself was also interested in and received a portion of said profit; and, if so, who it was?

Answer. My father, Lewis B. Williams, was interested equally with myself, and received the same share of the profit that I did, though he had nothing to do with the transaction of the business in this particular case. And further this deponent sayeth not.

W'M G. WILLIAMS.

Another witness, LEWIS B. WILLIAMS, after having been first duly sworn, in answer to question' deposes and says as follows:

1st question by counsel of defendant Grymes. State your age, residence, and occupation, and whether you are related to the witness William G. Williams, whose deposition has just been taken in this case; and, if so, how? State also whether there is or was, in the year 1866,

355 any other lawyer by the name of Williams residing at or near to Orange Court-House besides the said William G. Williams and yourself.

Answer. I am sixty-eight years of age. I reside in Orange Co., Va., and am by occupation a lawyer. I am the father of William G. Williams. There is not now, nor was there in the year 1866, any other lawyer named Williams at Orange Co.-H's', or in the county of Orange, besides the said William G. Williams and myself.

2d question by same. Henry Bowman, a witness who has been examined on behalf of the plaintiffs in this case, states in his deposition that when he was at Orange Court-House, in the summer of the year 1866,

he had a conversation with the defendant Peyton Grymes, in the presence of a "Williams, an attorney at Orange Court-House, through whom he had access to the records of the county." State whether or not you are the Williams referred to by him.

Answer. I am not the Williams referred to by Bowman in his deposition. I was not present at any conversation between him
356 and the defendant, Grymes, in the year 1866, or at any other time, and, indeed, do not recollect that I ever saw the witness Bowman in my life, and know certainly that I never had the slightest acquaintance with him. And further this deponent sayeth not.

LEWIS B. WILLIAMS.

Adjourned until to-morrow morning at same place.

Taking of depositions resumed M'ch 31st, 1870.

Another witness, PEYTON G. HUME, after having been first duly sworn, in answer to questions deposes and says as follows:

1st question by counsel for defendant Grymes. Will you look at the paper now shown you, marked "Paper A, filed with the deposition of Thomas C. Gordon," and state all you may know about it?

Answer. The portion of the paper commencing "Dear Pate, Orange C.-H., Va., Ap'l 12th, 1866," and ending "Y'rs, truly, W'm G. Williams," is a letter which I received from W'm G. Williams, which had attached to it a paper which he had drawn for me to sign. I did sign it, and returned it to him, making at the time a copy of the paper so
357 signed by me and returned to him, which copy will be found endorsed on the letter above mentioned from W'm G. Williams to me, commencing ("Copy.) At the request of Mr. Fisher, acting agent," &c., and ending "Orange County, Va., Ap'l 13th, 1866, P. G. Hume," the whole of said copy being written by myself. What is written below on the same paper, commencing, "Vancluse, Va, July 21st, 1866, I have this day (21st July, 1866,) turned over," &c., & ending "for Mess. Repplier & Lanigan, owners," and signed "P. G. Hume," was written by myself when I turned over the property to Mr. Thomas C. Gordon, to hold as agent for the owners, Messrs. Repplier & Lanigan. I informed them by letter that I had done so. The paper was handed by me to Mr. Thomas C. Gordon at the time I turned the property over to him. I did not see it again until yesterday, while he was giving his deposition; and when I gave my former deposition I did not recollect that there was any such paper. My memory is now refreshed by seeing it.

(The foregoing questions and answer of the witness Hume is
358 excepted to by plaintiffs' counsel as being incompetent evidence to prove anything at issue between the parties in this cause.)

2d question by counsel for def't Grymes. In your former depositions given in this cause you state that after you received a letter from Repplier stating that they had abandoned for the time their purpose of making explorations on the land, and that you then made out your bill against them (Repplier & Lanigan) for your services and expenses, amounting to $17.50, for which, soon afterwards, Repplier sent you a check enclosed in a letter dated 26th July, 1868; and that, after receiving that letter and the check enclosed, you left the premises. From the paper referred to in the foregoing question and answer, it seems that you turned the property over to Thomas C. Gordon on the 21st July, 1866. Will you explain this? Did you leave the premises when you turned

the property over to Gordon, or not until you received the letter and check, some days afterwards?

Answer. My recollection still is that I did not leave the premises until after I received the letter and check, though, as is shown by
359 the paper referred to, I turned the property over to Gordon some days previously. I turned it over to him on my return from Fredericksburg, after receiving the letter from Repplier informing me that they had abandoned their purpose to make explorations on the land for gold at that time. I remained on the premises, I think, several days after I turned the property over to Gordon, and received the letter and check while I was there; but about this I am not entirely positive, after so great a lapse of time; it is possible that I may have left the premises after I turned the property over to Gordon and before I received the check.

3d question by same. R. H. Catlett, in his deposition which has been given on behalf of the plaintiffs in this case, states that an arrangement was made between you and Fisher by which you were to obtain and send him (Fisher) specimens of quartz from another shaft than the one which he and Fisher say they supposed to be upon the land sold the plaintiffs; the shaft from which the specimens were thus to be obtained
360 and sent by you being known not to be on the land sold, but being either on the land of Scott & Slaughter or of the Liberty Mining Company; and that this arrangement between you and Fisher was either made in his (Catlett's) presence, or that he (Catlett) was informed of it by Fisher afterwards. Will you state your recollection as to this matter?

Answer. I recollect that a request was made of me, while we were on the ground together, that I should obtain and send Fisher specimens of ore from a shaft or cut on land which was then known by all parties not to be on the land then owned by my grandfather, Dr. Grymes; and that I did obtain and send Fisher several specimens (I may say a lot) of ore from the lands adjoining the tract sold by my grandfather to the plaintiffs and which Fisher knew did not come from the land sold to the plaintiffs. I do not recollect distinctly who it was that made the request, but suppose it must have been Fisher; they were both together with me at the time it was made. I did not recollect anything about
361 this request or of my having sent the ore to Fisher when I gave my former deposition in this case, but since hearing what Catlett says about it my memory is refreshed, and I recollect distinctly sending the ore as above stated; and that it was sent by me at the request of either Catlett or Fisher, (I am pretty sure that it was at Fisher's request,) made when we were together on the land.

4th question by same. Did Fisher or Catlett take with them or request you to send them any specimens of ore from the shaft you visited together and about which this controversy has arisen?

Answer. They took no ore and did not request me to send them any from the shaft referred to in the question. While we were at the shaft Fisher took up and looked at several pieces of the ore, giving them a very hasty examination, and then put them down. I am sure that ther he or Catlett took any of it away with them, and that they did not request me to send, and that I did not send, Fisher or any one
362 else any of the ore from that shaft. And further this deponent sayeth not.

P. G. HUME.

The foregoing depositions of Albert H. Smart, Thomas C. Gordon, William G. Williams, Lewis B. Williams, and Peyton G. Hume were duly taken, sworn to, and subscribed before the undersigned, W'm R. Taliaferro, a notary public for the county of Orange, State of V'a, in the counting-room of the drug-store of Mess. Taliaferro & Row, at Orange C. H., V'a, on the 29th, 30th, & 31st days of March, 1870, as stated in the caption and adjourning orders; said depositions being taken by Peyton Grymes, to be used as evidence in his behalf in a chancery suit pending in the circuit court of the United States of the district of V'a, holden at Richmond, V'a, in which George S. Repplier & James Lanigan, citizens of the State of Pennsylvania, are plaintiffs, and said Peyton Grymes, who is a citizen of the State of V'a, is a defendant; said depositions being taken in the presence of W'm J. Robertson, counsel for the defendant Grymes, and of Thomas J. Michie,
363 counsel for the plaintiffs, Repplier & Lanigan, and the said plaintiffs by their said counsel consenting to the taking of the same; the answers to the questions propounded to the witnesses being written down by myself in the presence of the witnesses and of the counsel on both sides, the counsel on both sides consenting to the mode in which all of said depositions have been taken, closed, and certified, and to their being used in evidence in said case of Repplier & Lanigan vs. Grymes, now pending in the circuit court of the United States for the district of V'a, holden at Richmond, V'a.

Given under my hand & notarial seal this 31st day of March, 1870.

[SEAL.] W. R. TALIAFERRO, *N. P.*

Notarial charge for taking the foregoing depositions, sixteen hours engaged, at seventy-five cents an hour, twelve dollars, ($12.00,) paid by the defendant, Grymes.

W. R. TALIAFERRO, *N. P.*

ORANGE C. H'E, V'A, *April 2d*, '70.

364 *Paper A.*

ORANGE COURT-HOUSE, VA., *April 12th*, 1866.

DEAR PATE: Dick Catlett requested me to prepare the above paper and get you to sign it. He says that Repplier & Lanigan wish you to remain on the property, as you have been doing for some time past, continuing your gold-washing operations.

They would prefer that you should occupy the house, if convenient, preventing the destruction or injury of the property.

Dick says they are undecided as yet what they will do with it—whether they will put it in the market or operate on it themselves; hence cannot say how long they will wish you to remain, and therefore want something like the above paper.

Yours, truly,

W'M G. WILLIAMS.

(Copy.)

At the request of Mr. Fisher, acting agent for Geo. S. Repplier and James Lanigan, of the State of Pennsylvania, I have this day taken possession of the land recently purchased by said Repplier & Lani-
365 gan of Peyton Grymes, said land lying in the county of Orange, and State of Virginia, and known as Vancluse; to hold said land

for them until they may make other disposition of or arrangement concerning the same.

Orange County, V'a.

P. G. HUME.

VANCLUSE, V'A, *July 21st*, 1866.

I have this day (21st July, 1866) turned over to Mr. Thomas C. Gordon the family house and farm of Vancluse, to act as agent in charge of same for Messrs. Repplier and Lanigan, owners.

P. G. HUME.

Letter B.

PHILA., *Oct.* 20, 1866.

THO. C. GORDON, ESQ'R':

DEAR SIR: Having been deceived in the Vancluse property, we have given it up. We must therefore refer you to Doctor Peyton Grymes for answers to your questions as contained in yours of the 14th inst.

Yours, truly,

GEO. S. REPPLIER.

366 *Letter C.*

NO. 329 WALNUT ST.,
Philadelphia Aug. 24th, 1866.

T. C. GORDON, Esq'r',
Orange Co., V'a:

DEAR SIR: We take pleasure in introducing to your acquaintance Henry Bowman, esq'r', who will attend to our interests in Virginia.

Any arrangements which he may make with you regarding the same will be agreeable to ourselves.

Truly yours, &c.,

GEORGE S. REPPLIER,
For self and James Lanigan.

Letter D.

[Office J. G. & G. S. Repplier, No. 329 Walnut st., Philadelphia; pier 13, Port Richmond.]

PHILADELPHIA, *Sep. 7th*, 1866.

Mr. THO'S C. GORDON,
Fredericksburg, V'a.:

DEAR SIR: Enclosed please find check for the sum of twenty-two & $\frac{50}{100}$ dollars, as follows:

367	Lewis Sanders	4 50
	James Smith	5 00
T. C.	Gordon	13 00
		$22 50

I will thank you to acknowledge the receipt of the same.

Respectfully, your ob't serv't,

HENRY BOWMAN.

Letter E.

329 WALNUT ST.,
Phila., Sept. 24th, 1866.

Mr. THO'S C. GORDON,
Fredericksburg, V'a.:

SIR: I am directed by Mr. Repplier to say to you that he is not prepared to make any arrangements with you in relation to the Vancluse property at present.

Respectfully, yours,

HENRY BOWMAN.

And at another day, to wit, at a circuit court held as aforesaid, on Tuesday, the 10th day of January, 1871.

On motion of complainants, by counsel, leave is given them to amend their bill filed in this cause.

368 And now, at this day, to wit, at a circuit court of the United States for the eastern district of Virginia, held at the court-room thereof in the city of Richmond, in said district, on Saturday, April 6th, 1872; this cause came on this day to be heard upon the original and amended bill of the plaintiffs and the exhibits filed therewith; the answers of R. H. Catlett and Peyton Grymes, together with the amended answer of said Grymes, general replication to said answer, the exhibits filed with the answer, and the depositions taken in the cause, & was argued by counsel. Whereupon the court is of opinion, and it is hereby adjudged, ordered, and decreed, that the sale of the tract of land in the bill & proceedings mentioned, and which was sold by the defendant, Peyton Grymes, to the plaintiffs, be, and the same is hereby, set aside and annulled.

That the bond for twelve thousand five hundred dollars executed by the plaintiffs to the defendant, Peyton Grymes, for the deferred payment be delivered up to them by the said Grymes for cancellation; and

369 it is further adjudged, ordered, and decreed that the said Peyton Grymes do pay to the plaintiffs the sum of twelve thousand five hundred dollars, with interest from the 7th day of April, 1866, (that being the amount heretofore paid by the plaintiffs on account of this sale,) together with the costs of this suit; and if the same shall not be paid within four months from the date of the service of a copy of this order on the said defendant, Grymes, then James Alfred Jones, & W'm W. Gerding, W. J. Robertson, and T. J. Michin, either two of whom may act, who are hereby appointed special commissioners for that purpose, are hereby directed to sell the aforesaid tract of land in the county of Orange, containing about 400 acres, to the highest bidder, at public auction at Orange C. H., for cash as to one-third and the balance in two equal instalments at 6 & 12 months, after having advertised the time, place, and terms of sale in one of the newspapers published in the city of Richmond, for four weeks prior to such sale, & after having posted a like notice upon the court-house door of Orange County for a

370 like period, and to report their proceedings to this court at its next term.

Therefore, on motion of the defendant, by his attorney, an appeal is allowed him to the Supreme Court of the United States, upon said defendant, or some one for him, executing a bond before the clerk of this

court in the penalty of $20,000.00, with security, to be approved by said clerk and conditioned according to law.

371 Circuit court of the United States of America, eastern district of Virginia.

GEORGE S. REPPLIER AND JAMES LANIGAN
vs.
PEYTON GRYMES.

Know all men by these presents that we, Peyton Grymes, James Newman, and John Willis, are held and firmly bound unto George S. Repplier and James Lanigan in the sum of twenty thousand dollars, to be paid to the said George S. Repplier and James Lanigan, their heirs, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this 12th day of April, A. D. 1872.

Whereas the above-named Peyton Grymes hath prosecuted an appeal and writ of error to the Supreme Court of the United States to reverse the judgment and decree rendered in the above-entitled suit by the circuit court of the United States for the eastern district of Virginia:

Now, therefore, the condition of this obligation is such, that if the above-named Peyton Grymes shall prosecute his said appeal and writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

PEYTON GRYMES. [SEAL.]
JA'S NEWMAN. [SEAL.]
JOHN WILLIS. [SEAL.]

Sealed and delivered in presence of—
M. F. PLEASANTS, *Clerk.*

372 UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

James Newman and John Willis, the sureties named in the within bond, being duly and severally sworn, says, each for himself, that he is a freeholder within the State of Virginia, and worth the sum of twenty thousand dollars over and above all debts, liabilities, and exceptions.

JA'S NEWMAN. [SEAL.]
JOHN WILLIS. [SEAL.]

Subscribed to in my presence and sworn before me the 12th day of April, 1872.

M. F. PLEASANTS, *Clerk.*

Filed April 12th, 1872, and approved.

M. F. PLEASANTS, *Clerk.*

373 UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

I, M. F. Pleasants, clerk of the circuit court of the United States for the eastern district of Virginia, do hereby certify that the foregoing contains a true and perfect transcript of the record, process, and proceed-

ings in a cause determined in said court, wherein Repplier and Lanigan are complainants and Peyton Grymes is defendant.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Richmond, in said district, this 13th day of December, A. D. 1872.

[SEAL.] M. F. PLEASANTS, *Clerk.*

(Indorsement on cover :) No. 419. Peyton Grymes, appellant, vs. George S. Repplier and James Lanigan. E. Virginia C. C. U. S. Filed 31st March, 1873.

a In the circuit court of the United States for the eastern district of Virginia.

RICHMOND, *Saturday, April 29th*, 1876.

GEORGE S. REPPLIER AND JAMES LANIGAN, citizens of the State of Pennsylvania, complainants,
against
PEYTON GRYMES, A CITIZEN OF THE STATE OF Virginia, respondent.
} No. 43. In equity.

Be it remembered that on this day, to wit, on the 29th day of April, 1876, a writ of certiorari from the Supreme Court of the United States was filed in the clerk's office of our said court, which is in the words and figures following, to wit:

THE UNITED STATES OF AMERICA, *ss:*

{ Seal of the Supreme Court of the United States. } The President of the United States of America to the judges of the circuit court of the United States for the eastern district of Virginia, greeting:

Whereas in a certain suit in said circuit court between George S. Repplier and James Lanigan, complainants, and Peyton Grymes and R. H. Catlett, defendants, which said suit was removed to the Supreme
b Court of the United States by virtue of an appeal taken by Peyton Grymes, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

"That the Exhibit B of the bill of complaint has not been made part of said record, but a different map has been substituted therefor."

You, therefore, are hereby commanded that, searching the records and proceedings in said cause, you certify to the said Supreme Court of the United States what omissions and errors you shall find in the said record and proceedings as certified up to, and now on file in, the said Supreme Court, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court, the twenty-seventh day of April, A. D. 1876.

D. W. MIDDLETON,
Clerk Supreme Court U. S.

Exhibit B of the bill of complaint referred to in the foregoing writ of certiorari is as follows:

c UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

I, Matthew F. Pleasants, clerk of the circuit court of the United States for the eastern district of Virginia, hereby certify the foregoing map to be a copy of Exhibit B of the bill of complaint in this cause, and that I have searched the record and proceedings in the cause aforesaid, and find that said Exhibit B of the bill of complaint has not been made part of the record and proceedings certified up to, and now on file in, the Supreme Court of the United States in this cause, but a different